

1 A. I could look at up to ten.

2 Q. Now, if you turn to page two of the plea  
3 agreement, and there's a paragraph that begins  
4 "fifth". Do you see that? It's on the typed page  
5 two.

6 A. Yes, I see it.

7 Q. Would you read that paragraph, please?

8 A. "Government agrees that the statement" --

9 MR. OTERI: I can't hear him.

10 A. "The Government agrees that the  
11 statements, information, evidence and testimony that  
12 your client provides pursuant to this agreement  
13 cannot be used either directly or indirectly against  
14 his brother Joseph Capano or his sister Marion."

15 Q. Why did you ask for that term to be put  
16 in the plea agreement?

17 A. Because I didn't know if they had said  
18 anything or not said anything to get them in trouble,  
19 and I was just trying to protect everybody.

20 Q. Then paragraph six, or right after that,  
21 it says "The Government will not prosecute Edward  
22 Delcollo for unlawful possession of firearms."

23 Who is Edward Delcollo?

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1 A. He's my best friend.

2 Q. Why did you want the Government not to  
3 prosecute him?

4 A. Because of me they raided his house.

5 Q. And why would that cause him to be in any  
6 harm?

7 A. They found all his hunting guns.

8 Q. Do you know who purchased one of those  
9 guns?

10 A. I may have.

11 Q. Are you aware it's illegal to purchase a  
12 gun for a convicted felon?

13 A. Yes.

14 Q. Now, other than your attorney, had you  
15 discussed -- did you discuss before November 8, 1996,  
16 the conversations that you've testified about that  
17 you had with your brother Tom? Had you discussed  
18 that with anybody other than your attorney?

19 A. Not in detail. I did with my attorney.

20 Q. But had you discussed them with anybody  
21 else?

22 A. Yes.

23 Q. Who was the person you discussed them

1 with?

2 A. My friend Rudy, Rudy Dryden.

3 Q. Had you discussed them with any family  
4 members?

5 A. I told my brother Louis.

6 Q. Do you recall when you told your brother  
7 Louis?

8 A. I know it was around the holidays. It  
9 was chilly out. I remember it was at my house at 7  
10 Emma.

11 Q. What holiday season are you talking  
12 about?

13 A. I'm not real sure, Mr. Connolly. I know  
14 it was chilly out. I can remember what he was  
15 wearing. I'm not real sure on the exact dates.

16 Q. Have you ever used cocaine?

17 A. Yes.

18 Q. Have you ever used marijuana?

19 A. Yes.

20 Q. Did you use cocaine and marijuana on a  
21 frequent basis in 1995 and '96?

22 A. I did.

23 Q. Has the amount of cocaine you used

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1 affected -- strike that. I'm sorry, I'll withdraw  
2 the question.

3 Did the amounts you used change after  
4 June 28, 1996?

5 A. It did. I used more.

6 Q. Why?

7 A. Excuse me?

8 Q. Why?

9 A. For me it relieves a lot of stress.

10 Q. About how much cocaine on average were  
11 you using in '95 and '96, before June 28, 1996?

12 A. Gram or two a week. Sometimes I would do  
13 more; some weeks I would do less. Some weeks I  
14 wouldn't do any at all. But on an average, one or  
15 two grams a week.

16 Q. How about after June 28th?

17 A. Two to four. But, again, sometimes I  
18 would do it; sometimes I wouldn't do it. Sometimes I  
19 would do more. Sometimes I would do less. On an  
20 average, it increased.

21 Q. Do you know whether you were high on  
22 cocaine or any other substance when your brother Tom  
23 had the conversations with you that you've testified

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1 had it written down, did you?  
 2 A. Excuse me, I never told Tom that I had  
 3 it --  
 4 Q. That you had written down this alibi?  
 5 A. I don't know if I did or I didn't.  
 6 Q. All right. Now, sir -- now, sir, your  
 7 brother Tom, when was the last time you talked to him  
 8 before June 28th, that Friday?  
 9 A. I don't know.  
 10 Q. Okay. You had not had any meetings set  
 11 up for June 28th with Tom in advance?  
 12 A. Oh, no.  
 13 Q. And Tom had not called you at any time  
 14 and said be there on the 28th, I'm going to be there?  
 15 A. No.  
 16 Q. Matter of fact, Tommy knew you spent most  
 17 of your time down at the beach during the summer,  
 18 correct?  
 19 A. That's correct.  
 20 Q. He had no way of knowing you were going  
 21 to be home, correct?  
 22 A. Yes.  
 23 Q. Okay. And on the drive down to Stone

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1 Harbor -- by the way, Tommy was driving at about 80  
 2 miles an hour?  
 3 A. He was driving fast.  
 4 Q. And you had to slow him down?  
 5 A. I think so. I'm not real sure. I'm not  
 6 real sure about that.  
 7 Q. He was very agitated and very upset, he  
 8 was very high strung?  
 9 A. Yes, at that point I think we both were  
 10 agitated and upset.  
 11 Q. He was not the calm, reasoned, rational  
 12 lawyer that you know?  
 13 A. That's correct.  
 14 Q. He was a guy running around like a nut?  
 15 A. He was very nervous.  
 16 Q. Now, sir, when you were driving down to  
 17 Stone Harbor with Tom in the car, you asked Tom what  
 18 happened and he wouldn't tell you, correct?  
 19 A. I don't know if that -- I don't remember  
 20 that. I mean --  
 21 Q. You don't remember that?  
 22 A. No.  
 23 Q. You do remember --

1 A. Tom has never told me what happened.  
 2 Q. You do remember that Tom never told you  
 3 what happened?  
 4 A. Yes, I do remember that.  
 5 Q. And you do remember, and you have  
 6 testified in the past, that you don't know what the  
 7 motive was for what happened with that lady?  
 8 A. Yes, that's true.  
 9 Q. You don't know if there was a weapon  
 10 involved?  
 11 A. That's true.  
 12 Q. You don't know whether her death was  
 13 intentional?  
 14 A. That's true.  
 15 Q. You don't know whether it was just a  
 16 reckless act that resulted in her death?  
 17 A. That's true.  
 18 Q. You don't know whether it was a negligent  
 19 act?  
 20 A. That's true.  
 21 Q. And you don't know whether it was an  
 22 accident?  
 23 A. I don't know what happened, Mr. Oteri.

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1 Q. Now, when Mr. Connolly asked you  
 2 yesterday if Tommy told you that her death was the  
 3 result of an accident, you said he hadn't told you?  
 4 A. He did not tell me.  
 5 Q. He didn't tell you anything?  
 6 A. That's right. He didn't tell me  
 7 anything.  
 8 Q. All right. Now, sir, when you came back  
 9 in on the 28th from the ocean, you ended up going bar  
 10 hopping that night, correct?  
 11 A. Yes, sir.  
 12 Q. Did you go out with Eddie Delcollo?  
 13 A. Excuse me?  
 14 Q. Did you go out with Eddie Delcollo?  
 15 A. Delcollo.  
 16 Q. Delcollo?  
 17 A. Yes, sir.  
 18 Q. And you did some drinking?  
 19 A. Excuse me?  
 20 Q. You did some drinking?  
 21 A. A lot.  
 22 Q. You did some drugs?  
 23 A. I may have.

1 A. I think Tom was more mad about it than I  
2 was.  
3 Q. But you were pretty mad, were you not, to  
4 suddenly find yourself in the papers accused of being  
5 an unfit parent?  
6 A. That's a joke. I'm not an unfit parent.  
7 Q. But you were upset by it, were you not?  
8 A. You would be too, I think.  
9 Q. Gerry, you are absolutely right. I would  
10 be. But you were upset?  
11 A. Sure, it's fair to say.  
12 Q. Now, Gerry, do you remember making a  
13 phone call and leaving this message on February 9th,  
14 1998, to your mother:  
15 Mom, this is your son Gerry. I called  
16 you but Katie hung up on me. Then I called again,  
17 and her little asshole boyfriend hung up on me. You  
18 have ten minutes to call me back. If you don't, you  
19 can go fuck yourself.  
20 Do you remember making that call to your  
21 mother?  
22 A. I was drinking that day, and I remember  
23 apologizing afterwards.

1 if this goes to trial. I'll think up even more shit  
2 to keep my ass out of fucking jail. And I'll make up  
3 fucking shit as I go along to keep Tommy in there for  
4 fucking life. I hate him. You got ten fucking  
5 minutes to call me back or you'll never see my kids  
6 again. I'm not threatening you, but if you don't  
7 call me back in ten minutes, you can go fuck  
8 yourself. My number is 561 361-4145.  
9 Did you make that call and make that  
10 statement, Gerry?  
11 A. I'm sure I did, if you have it on tape.  
12 MR. OTERI: Thank you. I have no further  
13 questions, Your Honor.  
14 MR. CONNOLLY: I have a few questions,  
15 Your Honor.  
16 First of all, I'd like to at this point  
17 move to admit the entire proof positive hearing  
18 transcript into evidence.  
19 MR. MAURER: Your Honor, during the lunch  
20 hour, could I review it again and take a position?  
21 THE COURT: All right. Do we need to do  
22 that at this time?  
23 MR. CONNOLLY: I'm happy to wait until

1 Q. But you did make the call?  
2 A. I'm not saying I didn't.  
3 Q. And you apologized for it afterwards,  
4 correct?  
5 A. It's not nice to talk to my mother like  
6 that. I was drinking and very upset.  
7 Q. And you do things when you're drinking  
8 and upset?  
9 A. I made a mistake.  
10 Q. How about the second call, Gerry. Do you  
11 remember this? Do you remember saying this?  
12 Mom, this is your son. Mom, your son  
13 Gerry. You better fucking call me. I'm tired of  
14 being the bad guy. If you don't fucking call me,  
15 you'll never fucking see me or my wife or my kids  
16 again. What, are you pissed because I told the  
17 truth? Because Joe fucking Hurley couldn't break me  
18 down? As far as I'm concerned, you have three sons.  
19 One is a murderer in jail for fucking life, one you  
20 hate and that's Louie, and Joey. Like I said, you  
21 can go fuck yourself. Did you really think that I  
22 would go to jail for 12 fucking years? If you  
23 thought I was bad on the stand, God fucking help you

1 after lunch.  
2 THE COURT: Do you have redirect of this  
3 particular witness?  
4 MR. CONNOLLY: I have. I do have  
5 redirect.  
6 THE COURT: And how long do you  
7 anticipate it will take?  
8 MR. CONNOLLY: More than five minutes.  
9 THE COURT: All right. Then we'll take  
10 the luncheon recess. You can take the jury out. We  
11 will reconvene, hopefully, at two o'clock.  
12 (The jury left the courtroom at 12:52  
13 p.m.)  
14 THE COURT: Would everybody in the  
15 courtroom, except the jury, please be seated. Anyone  
16 who is up will be not be admitted back into the  
17 courtroom again.  
18 Counsel want to make argument on this  
19 issue before the luncheon break or afterwards?  
20 MR. MAURER: I'd like, assuming I'm the  
21 one, afterwards, Your Honor.  
22 THE COURT: Then I would suggest we meet  
23 in chambers at quarter of two.

1 A. Yes, I have.  
 2 Q. And you signed a document?  
 3 A. Yes, I have.  
 4 Q. Have you actually gone into court and  
 5 entered your plea yet?  
 6 A. No, I have not.  
 7 MR. WHARTON: Your Honor, I think,  
 8 without objection, we would offer as the State's next  
 9 exhibit Mr. Capano's written plea agreement.  
 10 MR. MAURER: It is without objection,  
 11 Your Honor.  
 12 THE COURT: All right. It may be so  
 13 marked and admitted as State's Exhibit 124.  
 14 THE CLERK: So marked.  
 15 (Whereupon State's Exhibit No. 124, Louis  
 16 Capano's plea agreement, was received into evidence.)  
 17 THE COURT: Thank you.  
 18 BY MR. WHARTON:  
 19 Q. Mr. Capano, let me show you State's  
 20 Exhibit 124 and ask you to take a look at that. Is  
 21 that, in fact, the agreement in which you entered  
 22 with the Federal Government?  
 23 A. Yes, it is.

1 A. That my agreement would be severed, I  
 2 suppose, and I could be prosecuted for other crimes.  
 3 Q. You have testified in front of a Federal  
 4 Grand Jury, have you not?  
 5 A. Yes, I have.  
 6 Q. In connection with this case?  
 7 A. Yes, I have.  
 8 Q. How many times have you testified?  
 9 A. Three times.  
 10 Q. Was the first one on August the 29th of  
 11 1996?  
 12 A. Yes, it was.  
 13 Q. And the second one was that on October  
 14 the 8th of 1996?  
 15 A. Yes.  
 16 Q. And the last one, was that on November  
 17 12th of 1997?  
 18 A. Yes, it was.  
 19 Q. And each time you testified, did that  
 20 testimony relate in some fashion to your brother  
 21 Thomas?  
 22 A. Yes, it did.  
 23 Q. Now, is he -- how does he fit in in the

1 Q. And it indicates that you're going to be  
 2 entering a guilty plea to a particular crime, does it  
 3 not?  
 4 A. Yes, it does.  
 5 Q. What is that crime to which you're going  
 6 to be entering a guilty plea?  
 7 A. Tampering with a witness.  
 8 Q. Is there a sentence which you -- which  
 9 the Federal Government is going to recommend that you  
 10 receive as a result of entering that guilty plea?  
 11 A. Yes, there is.  
 12 Q. What is that sentence?  
 13 A. One year probation.  
 14 Q. Now, do you have any obligations yourself  
 15 under that plea agreement?  
 16 A. Just to tell the truth.  
 17 Q. And you're required to testify truthfully  
 18 if called upon by the Government?  
 19 A. Yes, that's correct.  
 20 Q. Now, if you do not testify truthfully  
 21 when called upon to do so by the Government, what do  
 22 you understand the consequences of that failure to  
 23 be?

1 chronological range of your family, of your siblings?  
 2 A. He's the oldest brother, the second  
 3 sibling, second child.  
 4 Q. Second child. You have a sister who is  
 5 older than he is?  
 6 A. My sister Marion is the oldest, then Tom,  
 7 then myself, my brother Joseph, and my brother  
 8 Gerard.  
 9 Q. What is the age difference between you  
 10 and your brother Thomas?  
 11 A. Tom and I are two years apart.  
 12 Q. And between you and Joseph?  
 13 A. One year apart to the day.  
 14 Q. How about that.  
 15 Between Joseph and Gerard?  
 16 A. I think ten years.  
 17 Q. How about you and Gerard?  
 18 A. Eleven years.  
 19 Q. Okay. He's sort of the baby of the  
 20 family?  
 21 A. Yes, he is.  
 22 Q. I want to direct your attention to July  
 23 the 30th of 1996. Do you recall -- I misspoke, I saw



1 the look on your face. I meant June the 30th. My  
2 fault. June the 30th of 1996. I'll ask you if you  
3 had a conversation or any communication with your  
4 brother Thomas on that date?

5 A. Sunday?

6 Q. Yes, that would be a Sunday.

7 A. Tom called me mid-morning at my house and  
8 asked me to go over to his house on Grant Avenue,  
9 that he wanted to talk to me about something.

10 Q. Did you do that?

11 A. I did.

12 Q. When you got there, who was there?

13 A. Tom was there and his four daughters  
14 and -- my four nieces.

15 Q. Did you have a conversation with him?

16 A. Yes, Tom and I went back to an enclosed  
17 porch in the back of the house and he then told me  
18 about his relationship with Anne Marie Fahey.

19 Q. Did you know that he had had a  
20 relationship with Anne Marie Fahey --

21 A. No, I did not.

22 Q. -- before he told you on that date?

23 A. No, I did not.

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1 Q. Did you know that he had had -- had or  
2 was having a relationship with anyone at that point?

3 A. No, I did not.

4 Q. You were aware of his marital status at  
5 that time?

6 A. I knew he was separated from his wife  
7 Kay, but I wasn't aware of any -- any extramarital  
8 affairs at all.

9 Q. Did you know Debbie MacIntyre?

10 A. Yes.

11 Q. And how did you know her?

12 A. I'm sorry?

13 Q. How did you know her?

14 A. I've known her for years. She teaches  
15 at, or taught at, Tatnall School, and my son Louis  
16 the third went there, and I've known her.

17 Q. And you did not know of any relationship  
18 between your brother and Debbie MacIntyre?

19 A. None whatsoever.

20 Q. What did he tell you about this  
21 relationship with Anne Marie Fahey on June the 30th?

22 A. He told me he had been seeing her for a  
23 couple of years, that she was anorexic and bulimic

1 and suicidal, and that he had ended the relationship,  
2 and that he was seeing a psychiatrist with his wife,  
3 Kay, and that he had taken her for dinner on Thursday  
4 night in Philadelphia and that the police had gone to  
5 his house on Saturday in the morning, I guess, Sunday  
6 morning, two a.m. or three a.m.

7 Q. During the middle of the night?

8 A. During the middle of the night. And had  
9 questioned him about her whereabouts. And since he  
10 was the last one to be seen with her, he was

11 concerned that they suspected of him some wrongdoing.

12 Q. Now, this relationship with Anne Marie  
13 Fahey, I think you indicated that he said that they  
14 had -- they had broken up, or they were not seeing  
15 each other?

16 A. Yes, he told me that.

17 Q. But they had dinner on Thursday night  
18 previous?

19 A. Right.

20 Q. Did he describe to you what the nature of  
21 that relationship with her was at that time?

22 A. He said at that point they were good  
23 friends and he had even given her money to seek help

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1 for bulimia, or whatever, and that was the extent of  
2 their relationship at that point.

3 Q. Okay. That help that he was referring  
4 to, was that psychological help?

5 A. Yes.

6 Q. Did he tell you whether or not his wife  
7 Kay knew of this relationship he had with Anne Marie  
8 Fahey?

9 A. No, he told me that she did not know, and  
10 he did not want her to know. He was seeing a  
11 psychiatrist with Kay and they were trying to  
12 reconcile their marriage.

13 Q. Well, did he tell you -- you've told us  
14 that he told you that he was questioned by the police  
15 about Anne Marie Fahey's disappearance?

16 A. Yes, he told me that.

17 Q. What did he tell you -- and then that he  
18 told you they had had dinner on Thursday night?

19 A. That's correct.

20 Q. What did he tell you about his activities  
21 that night with Anne Marie Fahey?

22 A. He told me that after dinner they had  
23 gone to his house, and that while he was upstairs

1 using the men's room that when he went downstairs  
2 that Anne Marie Fahey had slit her wrists and got  
3 blood on the sofa. And I asked him if he had taken  
4 her to the hospital, and he said they were  
5 superficial wounds and that he had bandaged them up  
6 and took her home.

7 Q. Do you recall if he told you when he  
8 returned from Philadelphia or when he took her home;  
9 either of those two?

10 A. I don't think he ever told me when he  
11 returned from Philadelphia. I believe he told me he  
12 took her home nine or ten o'clock.

13 Q. Now, these wounds that she sustained, did  
14 he tell you whether or not she bled, as a result of  
15 those wounds?

16 A. Yes, he said she bled.

17 Q. And where did he tell you that she bled?

18 A. On the sofa.

19 Q. Were you familiar with that sofa?

20 A. No, I was not.

21 Q. To your knowledge -- did you know what  
22 room in the house it was in?

23 A. No, I had never been in the house before

1 Q. And that he had done this with your  
2 brother Gerry?

3 A. Yes.

4 Q. Now, as of Sunday, he told you that the  
5 police told him that Anne Marie Fahey was missing?

6 A. That's correct.

7 Q. Did he tell you whether or not he  
8 expected Anne Marie Fahey to appear?

9 A. Yes, he told me that he had given her  
10 money and she was planning to take Friday off and  
11 that he suspected that she was just away for the  
12 weekend at the beach and that she would show up on  
13 Monday.

14 Q. Now, this meeting that you had with him  
15 on Sunday, who initiated that?

16 A. He did. He called my house.

17 Q. He told you that he expected that Anne  
18 Marie Fahey would be back to work on Monday?

19 A. I'm sorry, I was confused. I thought you  
20 meant who initiated the meeting at his house on  
21 Sunday.

22 Q. That's right.

23 A. He initiated that.

1 on Grant Avenue. That was the first time.

2 Q. What did he tell you he did with the  
3 sofa?

4 A. He told me that he and my brother Gerry  
5 put the sofa in one of our dumpsters on Foulk Road  
6 and Concord Pike where we were building the First USA  
7 space.

8 Q. Where is that in relation to your office?

9 A. We're in the same office complex. It's a  
10 hundred yards away from my particular building.

11 Q. And were you familiar with what he was  
12 talking about when you refer to those dumpsters?

13 A. Yes, I was.

14 Q. Was there more than one dumpster at that  
15 site?

16 A. I believe there were two or three.  
17 Probably three.

18 Q. Did he tell you at that time whether or  
19 not he had put any other things in the dumpster  
20 besides the couch?

21 A. He told me he put some of her personal  
22 belongings, like a nightgown and a hair brush,  
23 something like that.

1 Q. And he told you that Anne Marie Fahey  
2 would be at work on Monday?

3 A. Yes. At the meeting on Sunday he told me  
4 that.

5 Q. Right. After that conversation concluded  
6 with your brother at his house, did you actually go  
7 look at the dumpster?

8 A. Yes, I went up to the job site and I was  
9 curious enough to look in the dumpster, and I saw  
10 something that could have been a sofa or a chair. It  
11 was turned upside down and mostly covered with  
12 construction debris, but I did see two legs  
13 upside-down, like the leg of a chair, or the leg of a  
14 sofa, just about this much.

15 MR. WHARTON: Your Honor, I think without  
16 objection, the State would offer this photograph as  
17 the next State's Exhibit.

18 MR. MAURER: Agreed, Your Honor. No  
19 objection.

20 THE COURT: Thank you, Mr. Maurer. That  
21 would be State's Exhibit Number 125. It is admitted  
22 without objection.

23 THE CLERK: So marked.

(Whereupon State's Exhibit No. 125,

1 photograph, was received into evidence.)

2 THE COURT: Thank you.

3 BY MR. WHARTON:

4 Q. Mr. Capano, let me show you State's  
5 Exhibit 125. Do you recognize what's depicted in the  
6 photograph?

7 A. Yes, I do.

8 Q. What is it in the photograph?

9 A. They're the office buildings that First  
10 USA occupies.

11 Q. The actual dumpsters, the location of the  
12 dumpsters, is that visible in the photograph?

13 A. No.

14 Q. Where, if you could orient the dumpsters,  
15 are they?

16 A. Well, there was a dumpster in the front  
17 of this one building on the left side of the picture,  
18 but there were -- there were -- there was at least a  
19 dumpster or two dumpsters behind the building.

20 Q. The dumpster you looked in, where was  
21 that?

22 A. It was behind the building on the left.

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1 Q. You said you saw something in there. How  
2 much of a piece of furniture did you see?

3 A. I really only saw two legs, about this  
4 long.

5 Q. Okay.

6 A. And the sofa was upside-down.

7 Q. And you saw two legs. What prevented you  
8 from seeing anymore of what was attached to the legs?

9 A. The sofas were covered by construction  
10 debris, drywall, things like that.

11 Q. Did you speak with your brother anymore  
12 that day?

13 A. Yes, Tom called me later in the day,  
14 later in the afternoon, to tell me that when he took  
15 his children home to 17th Street where his wife  
16 Kay -- where they live, that the police were waiting  
17 for him there when he dropped the girls off, and that  
18 they wanted to go back to his Grant Avenue house and  
19 look through the house and search the house, and he  
20 called me, and I recommended at that time that he  
21 hire an attorney.

22 Q. Now, did he tell you what he -- what, if  
23 anything, to do about that dumpster where he had told

1 you he and your brother Gerry had placed the couch?

2 A. He told me to have it dumped on Monday  
3 morning.

4 Q. What's that process, I mean when you dump  
5 a dumpster?

6 A. Usually the superintendent or somebody  
7 who is running the construction job would call the  
8 company that -- the garbage company, and they would  
9 just come with a truck and basically pull the  
10 dumpster out, take it to the landfill, I guess.

11 Q. These dumpsters that we're talking about,  
12 I guess dumpsters come in different shapes and sizes.  
13 Can you describe this particular type of dumpster?

14 A. I would say that this dumpster was about  
15 five feet tall on three sides and opened -- and long  
16 and narrow and opened at one end of it.

17 Q. Long and narrow, kind of like, where  
18 they're sitting, and open here?

19 A. Right. Up about five feet.

20 Q. Not one of those with the top that sort  
21 of --

22 A. No. No.

23 Q. Monday morning did you recall what he

Page 20

1 wanted you to do? Did you have the dumpster pulled?

2 A. Frankly, I had forgotten all about it.  
3 It really wasn't a priority. I didn't really see  
4 the -- I didn't see the urgency in any of it at all.

5 And Tom called me mid-morning, I don't know, nine or  
6 ten o'clock, I don't remember exactly, and told me  
7 that she had not shown up for work.

8 Q. "She" would be?

9 A. Anne Marie had not shown up for work, and  
10 asked me if I had dumped the dumpsters, and I said,  
11 No. He said, Could you get the dumpsters dumped?  
12 And I said, Sure, and I did.

13 Q. How did you arrange for that to be done?

14 A. Well, I called Chris Nolan who works for  
15 me, and he called Karen Feeney, and Karen Feeney  
16 called Shaw Taylor, and Shaw Taylor told Dick  
17 Armstrong, and Dick Armstrong told my son Louis the  
18 third, who happened to be working there for his  
19 college break, and that's what happened.

20 Q. Okay. After you had the dumpster dumped  
21 with that chain of people involved in having it  
22 done -- is everything that complicated in the  
23 developing business?

1 A. Well, the dumpsters --

2 Q. That's okay.

3 A. The dumpsters weren't full.

4 MR. MAURER: Maybe I should object, so we  
5 don't have to get into it.

6 THE WITNESS: I'm sorry.

7 BY MR. WHARTON:

8 Q. You said the dumpsters weren't full?

9 A. Yes.

10 Q. Okay. Now, after, or at some point, did  
11 you become aware of any significant publicity  
12 regarding this dinner your brother had had with Anne  
13 Marie Fahey and the fact that she was missing?

14 A. Yes, within a couple of days publicity  
15 was rather great.

16 Q. And did you have any more conversations  
17 with your brother about whether Anne Marie Fahey  
18 would appear shortly or soon, or if at all?

19 A. Yes, Tommy always told me that -- he  
20 swore to me that he took her home, that she was  
21 probably away. She used to work in Washington, D.C.  
22 with congressmen and that she had friends from all  
23 over the country, and that he was sure that she was

1 do with the bridges, the Delaware Memorial Bridges.

2 Q. Delaware Bay Authority?

3 A. Yeah, I think he's head of the River and  
4 Bay Authority.

5 Q. Who is Bob Harkins? You may have said  
6 Parkins. I call him Bob.

7 A. I don't know what he does now. He used  
8 to work with Tommy when Tom worked for the governor's  
9 office.

10 Q. Would it be fair to say that at least one  
11 of the reasons for this meeting was to discuss a  
12 public relations strategy for dealing with the bad  
13 publicity your brother was getting?

14 A. That was the purpose of the meeting at  
15 the time, yes.

16 Q. Now, at any time during this meeting did  
17 your brother say to the group that had been assembled  
18 there that this was an accident?

19 A. No, he did not.

20 Q. How long did the meeting last?

21 A. It lasted an hour or so.

22 Q. Did you become aware that your brother's  
23 home on Grant Avenue had been the subject of a search

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1 just an unhappy, troubled woman, and that she was  
2 just away, maybe even getting help for her bulimia,  
3 whatever, and that she would show up sooner or later.

4 Q. Did he report to you any purported  
5 sightings of Anne Marie Fahey?

6 A. Yes, one time in particular he told me  
7 that she was spotted at the Newark International  
8 Airport.

9 Q. That's in Newark, New Jersey?

10 A. Newark, New Jersey.

11 Q. Do you recall going to a meeting with  
12 your brother Thomas attended by a number of other  
13 people at Mr. Oberly's office?

14 A. Actually, I think it was at Bart Dalton's  
15 office.

16 Q. Okay. I'm sorry. And do you remember  
17 some of the people who were there?

18 A. I believe Bart Dalton was there and Mike  
19 Harkins was there, and a fellow named Parkins I think  
20 was there, and maybe Brian Murphy, myself.

21 Q. Mike Harkins is -- who is he?

22 A. He's a former Secretary of State, and I  
23 think he is, I guess his title is -- has something to

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1 warrant, the execution of a search warrant?

2 A. Yes.

3 Q. Where did your brother live after the  
4 institution of that search warrant?

5 A. He lived at my house.

6 Q. Did he move in directly after the search  
7 warrant?

8 A. Yes, he did. I believe he moved in that  
9 same night.

10 Q. Did you also become aware that there were  
11 searches being conducted of several dump sites?

12 A. Yes.

13 Q. Did your brother ever tell you any  
14 objects that might be found during these searches of  
15 the dump sites?

16 A. Well, when they were searching the dump,  
17 he told me that he had thrown a gun in the dumpster  
18 and that he -- and that he hoped they found it in the  
19 dump because it would prove that it had never been  
20 shot.

21 Q. Now, did you know your brother to be  
22 someone who possessed guns?

23 A. No.



1 Jim Florio did a stop by because he had an event prior  
2 to our event that was being hosted by attorneys.  
3 Q. Did Mr. Capano's firm at the time sponsor in  
4 any way that fund raiser?  
5 A. I have no idea.  
6 Q. Or a fund raiser for Governor Florio held  
7 around the same time?  
8 A. For your first question, did you mean did we --  
9 did his firm sponsor our event?  
10 Q. Yes.  
11 A. No, they did not.  
12 Q. Did I hear you correctly say you don't recall  
13 who introduced you to Tom Capano?  
14 A. No.  
15 Q. Could it have been one of the Governors, Florio  
16 or Carper?  
17 A. It's too long ago to remember.  
18 MR. O'DONNELL: Well, I won't ask anymore  
19 questions about it.  
20 MR. CONNOLLY: No further questions. The  
21 witness may be excused.  
22 MR. WHARTON: State calls Siobhan Sullivan.  
23

1 at that time?  
2 A. Yes. Back at Troop 9 in Odessa.  
3 Q. What were your responsibilities with the  
4 Executive Security Unit as related to the Governor?  
5 A. We protect the family as well as the Governor.  
6 But the day I would be working with the Governor, I  
7 would pick up the Governor at his residence. Knowing  
8 his schedule prior to the day before I would pick up the  
9 Governor, I would contact Anne Marie who was the  
10 scheduler for the Governor and learn about his schedule.  
11 So I would have the Governor's schedule ahead of time  
12 through Anne Marie. And I would pick up the Governor  
13 that day or I would drive and protect him to every event  
14 until his duration that night.  
15 Q. When he was not at an event, but rather in one  
16 of his offices, would you also be at the office?  
17 A. I'm sorry, I didn't hear you.  
18 Q. Let's say he was not at an event and he was at  
19 an office -- He had an office in Wilmington; is that  
20 right?  
21 A. Yes.  
22 Q. And did he also have an office in Dover?  
23 A. Yes. Tatnall Building.

1 SIOBHAN SULLIVAN,  
2 the witness herein, having first  
3 been duly sworn on oath, was examined  
4 and testified as follows:  
5 DIRECT EXAMINATION  
6 BY MR. WHARTON:  
7 Q. Good afternoon.  
8 A. Good afternoon.  
9 Q. Who do you work for?  
10 A. Delaware State Police.  
11 Q. How long have you been with the Delaware State  
12 Police?  
13 A. Just short of 12 years.  
14 Q. Right now what is your assignment with the  
15 police?  
16 A. Executive protection or for the Governor.  
17 Q. How long have you been doing that work?  
18 A. Little over five and a half years.  
19 Q. When did you begin doing that?  
20 A. His first election, '92.  
21 Q. Was there interruption in your service?  
22 A. Yes, February '98 to September '98.  
23 Q. You were doing other work for the State Police

1 Q. When he was at one of those building where were  
2 you?  
3 A. With him. We have an office in both buildings.  
4 Q. So if the Governor is at work in the office you  
5 are at that office?  
6 A. That's correct.  
7 Q. You mentioned Anne Marie. You knew Anne Marie  
8 Fahey; is that correct?  
9 A. Yes, I did.  
10 Q. How is it you got to know her?  
11 A. I met Anne Marie the first day I joined the  
12 Governor's staff Executive Protection. Like I said she  
13 was his right-hand person, his scheduling secretary.  
14 Q. How closely did you work with-- I mean, I'm  
15 talking about you pleural, like the Executive Security  
16 Unit, work with her?  
17 A. I would say, to compare it, the Governor looks  
18 at us as his right-hand person and know his day is going  
19 to go well because we are there. He has a lot of trust  
20 in us. I would look at Anne Marie as my right-hand  
21 person where she is setting my day so my day would flow  
22 correctly to the Governor.  
23 Q. You had to have a lot of contact with her?

1 A. Yes. One on one.

2 Q. At some point, would you say that you became  
3 friendly with her?

4 A. Yes, I did.

5 Q. At some point -- Well, first of all, let me  
6 back up. Did you know the defendant?

7 A. Yes, I did.

8 Q. And how was it that you met him?

9 A. Anne Marie Fahey introduced me on an occasion  
10 down at Woodburn, which is a mansion to the Governor.  
11 They had an event there and Anne Marie introduced me to  
12 Tom Capano.

13 Q. Prior to your introduction by her, did you know  
14 that they were friends?

15 A. Yes, I did.

16 Q. How did you know that?

17 A. Anne Marie and I used to always talk when we  
18 were in the Governor's office. And she was saying she  
19 was going to a concert or possibly going to an event  
20 which was a pretty high event with the Governor's  
21 office. And I would joke around with her, where did you  
22 get tickets? Tell me. And she would say Tom Capano  
23 bought her the tickets.

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1 Q. Do you know whether she considered him a close  
2 friend of hers?

3 A. Yes. Throughout our friendship, prior to Anne  
4 Marie disappearing, she would say that she looked at Tom  
5 Capano as one of her best friends and she would talk to  
6 him occasionally.

7 Q. At some point, did she tell you about perhaps,  
8 leaving the Governor's office?

9 A. Yes. That was around spring of '95. She had  
10 told me that-- Let me go back. It is very stressful in  
11 what our jobs are with the Governor between security and  
12 executive scheduler. Mine would be stress would be  
13 safety-wise, Anne Marie's stress level would be she had  
14 to make sure the schedule went -- flowed correctly for  
15 the Governor. And we had a lot of stress. We probably  
16 have the most stress of anybody in the office I would  
17 say. And she had told me that Tom Capano had offered  
18 her a job at Louie Capano's office.

19 Q. When did you say that was?

20 A. Spring of '95.

21 Q. Obviously she didn't take that job?

22 A. No, she did not.

23 Q. Did --

1 MR. MAURER: Can I interrupt for a moment to  
2 consult with counsel?

3 THE COURT: Certainly.

4 MR. MAURER: Can we take just a moment, your  
5 Honor?

6 THE COURT: Certainly.

7 THE COURT: Mr. Wharton.

8 BY MR. WHARTON:

9 Q. I think what I last asked you about was this  
10 job offer Anne Marie told you was being made, or  
11 attempted to be made, by the defendant with his brother  
12 Louis Capano's business and she did not ultimately  
13 accept that job, correct?

14 A. Yes.

15 Q. She stayed with the Governor's office?

16 A. Yes.

17 Q. So you knew she didn't take the job. Did you  
18 have a conversation with the defendant himself?

19 A. Yes, I did.

20 Q. How did that conversation get initiated?

21 A. Tom Capano would usually call me on my pager  
22 and leave a phone number for me to call him back. And I  
23 received a page and returned Tom Capano's call.

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1 Q. He had paged you and you returned his call?

2 A. Yes.

3 Q. And what did he tell you?

4 A. He asked me -- there was different times that  
5 Mr. Capano had called me over several occasions and a  
6 lot of times he would ask if I wanted to get out and get  
7 a beer. It was always when I got done work that night  
8 with the Governor. And he knew I coached basketball and  
9 wanted me to help his kids, coach them in some  
10 basketball. And at that time he wanted to know if I  
11 wanted to go get a beer and talk about basketball. I  
12 said no, I had a long day, I need to get home. At which  
13 time he asked if I had spoken to Anne Marie today. And  
14 he said, "She's really mad at me."

15 And I said, "You have to just let her be, Tom."

16 And he goes, "You know I left my wife and I'm  
17 just really lonely right now."

18 Q. And did he indicate whether or not they had an  
19 argument of some sort?

20 A. Yes. He stated that they had a fight that day  
21 and Anne Marie was really mad at him.

22 Q. Did he also indicate to you whether he did, in  
23 fact, do anything about trying to get her a job with his

1 brother?

2 A. When I talked-- We talked about the stress  
3 level of the Governor's office. And Tom also talked to  
4 me that he offered Anne Marie a job at his brother's  
5 Louie's office, and Anne Marie refused to take the job.

6 Q. When did you next see Anne Marie Fahey?

7 A. I know I was off that weekend, so it had to be  
8 soon after that. We usually work every couple days  
9 after, so it had to be the following week.

10 Q. Do you know if that was before Christmas of '95  
11 or after?

12 A. It was before Christmas of '95.

13 Q. Did you tell her about your conversation with  
14 the defendant?

15 A. Yes. I always told Anne Marie when Tom Capano  
16 would call me. And at that certain time Anne Marie  
17 became very upset.

18 Q. What did she tell you?

19 A. When I told her Tom Capano called me and paged  
20 me and asked if I had talked to her and he told me that  
21 Anne Marie was very upset with him, and I told Anne  
22 Marie that, she said, "He is a possessive, controlling  
23 maniac. I'm just getting tired of him."

1 very short, asked how I was doing. And basically we

2 ended the phone conversation after how I was doing, what  
3 was I doing for the weekend.

4 Q. Now, did you talk with Anne Marie after she  
5 came back?

6 A. Yes, I did.

7 Q. And did you report to her that Tom Capano had  
8 inquired of you about her whereabouts?

9 A. Yes, I did. I told Anne Marie, once again, in  
10 our office that Tom Capano had paged me and was asking  
11 if I knew where she was or if I have talked with her.

12 Q. What was her response to you?

13 A. At that time, very adamantly said, "He's  
14 fucking stalking me."

15 And I tried to calm Anne Marie down. I said  
16 Anne Marie there is a charge, there's a crime against  
17 that, we can give you protection. We are here for the  
18 Governor, but we are also here for the staff and we can  
19 provide protection.

20 Q. What was her response?

21 A. At that time I think she felt she could handle  
22 it at that time and repeated that she had to end it with  
23 Tom Capano.

1 And stormed out of my office and went back to  
2 her office.

3 Q. Were you aware of whether or not she was around  
4 Memorial Day of 1996, whether she was going away?

5 A. Yes, I was.

6 Q. Where did you understand she was going?

7 A. She was going to the New England area with her  
8 boyfriend, Mike Scanlon.

9 Q. Did you have any-- You knew about Mike Scanlon?

10 A. Yes.

11 Q. Did you have any contact with the defendant  
12 around that time?

13 A. Yes, I did.

14 Q. Tell us about that contact.

15 A. Once again, I received another page, at which  
16 time Tom Capano had called me.

17 Q. Was this while she was away or before she went  
18 away?

19 A. While she was away.

20 Q. And he paged you?

21 A. I returned the page, and he asked me if I had  
22 talked to Anne Marie, and I said no. And he asked me if  
23 I knew where Anne Marie was and I said no. He kept it

1 Q. Do you know when if she got back if she  
2 had -- did she tell you she had any concerns when she  
3 got back from new England?

4 A. When I told her about him paging me, she stated  
5 she was afraid Tom Capano was going to wait for her and  
6 she did not want Mike and Tom having a confrontation,  
7 she was afraid of that.

8 Q. Did she indicate whether Mike Scanlon knew  
9 about her relationship with Tom Capano?

10 A. Throughout our conversations, throughout our  
11 relationship with working and Tom Capano came up, she  
12 told me she did not tell Mike Scanlon about Tom Capano.

13 Q. Now, did you also talk to her about Mike  
14 Scanlon?

15 A. Yes.

16 Q. And what did she tell you about Mike Scanlon  
17 how she felt about him?

18 A. She felt very highly of Mike Scanlon. For a  
19 time there, the last year, Anne Marie was very down,  
20 looked very upset and down. And seemed like when she  
21 met Mike Scanlon her life came back into her. She  
22 wasn't as down in the office, looking forward to getting  
23 together with Mike Scanlon. She felt -- I felt with her

1 you don't transfer it to anyone. You just hold on to  
2 it, and if the F.B.I. shows up with a search warrant,  
3 then they're going to seize that anchor, but we're  
4 not going to play games with it.

5 There came a time when Gerry told me that  
6 he didn't have the anchor; that he had been requested  
7 by Tom to turn the anchor over to him or his lawyers  
8 so that Tom's lawyers could take a picture of the  
9 anchor, and from the memo I guess this was when I  
10 learned that Gerry didn't have the anchor even though  
11 I had told him to keep the anchor.

12 When I realized that Gerry had turned the  
13 anchor over to Tom, I told him in no uncertain terms  
14 to get that anchor back, put it right back in the  
15 garage where it was he was keeping it and leave it  
16 there.

17 Q. Now, between that meeting in June and  
18 October of 1997, what was the status of your strategy  
19 with Gerry as far as whether you were coming in to  
20 speak to the government or whether you were not  
21 coming in to speak to the government?

22 A. We went back and forth.

23 Q. You had not made a final decision one way

1 or another?

2 A. Well, Gerry had not made a final  
3 decision. In my own mind --

4 MR. O'DONNELL: Objection. I don't know  
5 that that's relevant at this point.

6 THE COURT: All right. I'll sustain the  
7 objection.

8 Q. You had not committed -- at any rate  
9 Gerry Capano had not committed to you unequivocally  
10 that he was going to come in.

11 A. True.

12 Q. Were you aware in October that his house  
13 was searched?

14 A. I got a rather -- I was told in rather  
15 dramatic fashion.

16 Q. How did you become aware?

17 A. I was at my home. It was probably 7:30,  
18 8:00 at night. I think I was sitting down to dinner.

19 I got a phone call from Gerry at home  
20 which is not necessarily unusual and not that big a  
21 deal. I said -- Gerry was on the other end of the  
22 line.

23 I said, "How ya doing."

1 He said, I'm doing great except I'm  
2 lying on the floor of my garage with my hands  
3 handcuffed behind my back, a gun pointed at my head  
4 and thirty F.B.I. agents rummaging through my house."

5 I said, "Oh". That's how I found out.

6 Q. Now, did you meet with him and talk about  
7 the ramifications of that search warrant being  
8 executed on his house?

9 A. Sure.

10 Q. Were you aware of whether or not any  
11 drugs were found during the execution of that search  
12 warrant?

13 A. I had been told that, if I have this  
14 straight, a small amount of marijuana was found, and  
15 perhaps a small amount of cocaine was found in his  
16 home or garage, but a very small amount, and that a  
17 little bit more, about two grams of cocaine had been  
18 found in his truck outside of the home. And we  
19 discussed that.

20 Q. Was he arrested?

21 A. He was not arrested. He was detained.

22 Q. Were you aware of whether that publicity,  
23 excuse me, whether that discovery of the cocaine and

1 marijuana in his house precipitated any investigation  
2 by child protective agencies working for the State of  
3 Delaware?

4 A. Yes, I was.

5 I don't remember how quickly, but fairly  
6 shortly after the search took place, and the  
7 search -- my recollection is there was an article in  
8 the newspaper, but I'm not sure about that, but the  
9 bottom line is that Child Protective Services became  
10 aware that there had been that amount of controlled  
11 substances found in and around the home of Gerry and  
12 Michele, and they wanted to interview the family to  
13 determine whether or not the children were at risk.

14 Q. And were you representing him in that  
15 process?

16 A. Yes, sir.

17 Q. Do you know whether they interviewed the  
18 family?

19 A. Did they?

20 Q. Child Protective people.

21 A. They did. In my presence, two folks came  
22 out from Child Protective and interviewed Gerry and  
23 Michele in their home sometime in mid-October or so.



1 No other questions at this time.

2 THE COURT: In view of the voir dire,  
3 does the State have any questions on this issue to  
4 ask this witness?

5 MR. WHARTON: No.

6 THE COURT: In that case, we can bring  
7 the jury in.

8 (The jury returned to the courtroom)

9 THE COURT: Members of the jury, again  
10 let me offer my apologies. We have been in session  
11 and have been addressing issues that needed to be  
12 dealt with outside of the jury's hearing.

13 My apologies for not being able to  
14 explain those matters, but those are questions of the  
15 law that needed to be resolved.

16 Mr. Wharton, you may continue.

17 CONTINUED DIRECT EXAMINATION

18 BY MR. WHARTON:

19 Q. When we left before the luncheon recess,  
20 you told us that initially Gerry told you that maybe,  
21 possibly the defendant could have said something like  
22 he needed to borrow a boat if he killed someone or  
23 something like that. Is that a reasonably accurate

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1 paraphrase?

2 A. Yes. The only thing more accurate would  
3 be if I read it directly from my memo. But it's  
4 something like that.

5 Q. And you also testified that you did not  
6 press him at that time.

7 A. I did not press him.

8 Q. But at a later occasion you talked to him  
9 about that comment.

10 A. A short time later; not the same day.

11 Q. Within a couple of days?

12 A. Probably.

13 Q. And at that time there were no  
14 conditions, if you will.

15 A. I said something first, and I then asked  
16 him again where are we on this issue, and the  
17 response was without condition.

18 Q. Without condition. Were there any  
19 maybe's?

20 A. Any what?

21 Q. Maybe's.

22 A. No.

23 Q. Possible's?

1 A. No.

2 Q. Were there any could have's?

3 A. No.

4 Q. Was there any "something like it"?

5 A. No.

6 Q. Was it in any way equivocal?

7 A. No.

8 Q. When was it that you and Gerry decided  
9 that you were going to come in and talk to the  
10 authorities?

11 A. Pretty much by the end of late October.

12 Q. When did you actually do that?

13 A. Gerry and I came in on a Saturday which I  
14 think was the 8th of November.

15 Q. Now, had you had a --

16 A. If I can finish though, two days prior to  
17 that on the 6th --

18 Q. That's what I was going to ask you.

19 A. I myself had spoken with Mr. Connolly  
20 face to face but without Gerry. I think it was two  
21 days before that.

22 Q. That's what I was going to ask you,  
23 whether you had had a meeting with Mr. Connolly or

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1 anybody else prior to Gerry and you coming in.

2 A. Yes, I think it was Thursday the 6th.

3 Q. Did you and he discuss the terms of a  
4 plea agreement --

5 A. We did.

6 Q. -- that Gerry was prepared to enter into.

7 A. Yes.

8 Q. Or was contemplating entering into.

9 A. Yes.

10 Q. Let me show you State's Exhibit 101 and  
11 ask you to take a look at that.

12 A. Yes.

13 Q. Is that the agreement that you and the  
14 client and the federal government ultimately entered  
15 into?

16 A. Yes, it is.

17 Q. When did you enter into that agreement?

18 A. On the 8th.

19 Q. When you brought your client in with you?

20 A. That's when we signed off on it, on the  
21 8th.

22 Q. Now, what does paragraph two require him  
23 to do?

1 A. On the first page?

2 Q. Yes.

3 A. The paragraph that begins "second"?

4 Q. Yes.

5 A. It required an admission that Gerry was  
6 guilty of a technical offense called misprision of a  
7 felony. It means knowing about a felony, not  
8 disclosing it and concealing it in violation of  
9 federal law. He agreed to plead guilty to a  
10 violation of the statute that prohibits that.

11 He also agreed not to contest the  
12 forfeiture of his white pick-up truck and certain  
13 firearms that were seized from his home at the time  
14 of the search a month earlier.

15 He agreed that the truck was forfeitable  
16 because there was a small amount of drugs found in  
17 the truck. He agreed to cooperate fully with the  
18 government's investigation into Anne Marie Fahey's  
19 death.

20 He agreed to provide complete and  
21 truthful statements, information and testimony at  
22 trial and other legal proceedings when requested by  
23 the government.

1 information given pursuant to the agreement, meaning  
2 the first set of statements, may be used to  
3 cross-examine him and may be introduced as rebuttal  
4 evidence.

5 Q. How about paragraph nine?

6 A. This is a stipulation that Gerry  
7 understood that if he made materially false  
8 statements to the government or testified falsely at  
9 trial or any other legal proceeding, including grand  
10 jury proceedings, he would be subject to perjury and  
11 obstruction of justice charges.

12 Q. Who is it that determines whether or not  
13 his obligations to testify truthfully are met?

14 A. If there was a dispute about whether or  
15 not Gerry had testified truthfully --

16 Q. For example, if there was an allegation  
17 that he did not testify truthfully at trial or at any  
18 other hearings including up to trial.

19 A. If the government were to make that  
20 allegation, and in effect, to say to me, "Your deal  
21 is off because Gerry didn't do what he promised to  
22 do," unless Gerry were to say to me, "That's true, I  
23 didn't testify truthfully," if Gerry were to say,

1 If he did all of that, the government  
2 agreed that a sentence of three years probation was  
3 the appropriate disposition of his case, meaning if  
4 he pled guilty when he pled guilty to the misprision  
5 offense, the government would recommend three years  
6 probation.

7 Q. What else is in that paragraph?

8 A. Say again?

9 Q. Is there anything else in that paragraph?

10 A. I don't think so. I think I read the  
11 whole thing.

12 Q. Paragraph labeled "eighth", what does  
13 that agreement require?

14 A. Paragraph eight on the second page, in  
15 the event -- this is directed to me. In the event --  
16 right?

17 Q. Right.

18 A. If my client Gerry offers testimony  
19 materially different from any statements made or  
20 information provided to the government by him, in  
21 other words, if Gerry were to tell the government  
22 A-B-C on one day and later say no, A-B-C isn't true,  
23 it's D, E and F, the statements, testimony and

1 "No, I did," so there was a dispute there, that  
2 dispute would be decided by a judge, either a federal  
3 or -- probably a federal judge, but by a judge.

4 Q. Does that determination of whether he  
5 testified truthfully ultimately rest with Mr.  
6 Connolly?

7 A. No.

8 Q. When you entered into that agreement and  
9 he signed that agreement to plead guilty to the  
10 misprision of a felony charge, was Gerry then  
11 de-briefed by investigators?

12 A. Yes, he was.

13 Q. Was that a lengthy process?

14 A. It started at about 10:00 in the morning  
15 and went until about 3:30 or four in the afternoon  
16 with a short break for lunch.

17 Q. Were you present for that?

18 A. Yes, I was.

19 Q. At the conclusion of that, in other  
20 words, after that multiple hour de-briefing, was  
21 there a taped statement made?

22 A. Yes, it was.

23 Q. Let me show you State's Exhibit 78. Do

1 A. I believe it was February 20th.  
 2 Q. Were you present at that meeting?  
 3 A. No, I was not.  
 4 Q. Did you ultimately meet with  
 5 Mr. Connolly, myself and some other investigators?  
 6 A. Yes, I did.  
 7 Q. When was that?  
 8 A. Friday, February 27th.  
 9 Q. Was Mr. Bergstrom present?  
 10 A. Yes, he was.  
 11 Q. During that meeting and prior to -- at  
 12 the beginning of that meeting I guess, did you reach  
 13 any agreement with the government about whether or  
 14 not you were going to face any criminal charges as a  
 15 result of what you said was your lie under oath on  
 16 January 28th in the interview and your false  
 17 statements when you purchased the gun?  
 18 A. Yes, I did.  
 19 Q. Was that a written document?  
 20 A. Yes, it was.  
 21 Q. Did you sign that document?  
 22 A. Yes, I did.  
 23 MR. WHARTON: I would offer this as the

1 Q. -- that you had committed prior to the  
 2 date of the agreement.  
 3 A. That is correct.  
 4 Q. Specifically, are you going to be  
 5 prosecuted for any lies that you told to the federal  
 6 grand jury when you testified before that grand jury  
 7 in September of 1996?  
 8 A. Correct.  
 9 Q. Are you going to be prosecuted for any  
 10 lies in that testimony?  
 11 A. No, I am not.  
 12 Q. Are you going to be prosecuted for any  
 13 lies or false statements you made under oath in the  
 14 January 28th, 1998 interview?  
 15 A. No, I am not.  
 16 Q. Are you going to be prosecuted for any  
 17 false statements you made under oath in conjunction  
 18 with your gun purchase?  
 19 A. No, I am not.  
 20 Q. As a condition I guess of this -- let me  
 21 put it this way. Could you read the first paragraph  
 22 of the agreement or at least the one labeled "first"?  
 23 A. The paragraph that begins with "first"?

1 next State's Exhibit, Your Honor.  
 2 MR. MAURER: Without objection, Your  
 3 Honor.  
 4 THE COURT: Without objection, it will be  
 5 admitted as State's Exhibit 148.  
 6 THE CLERK: So marked.  
 7 THE COURT: Thank you.  
 8 (AGREEMENT, State's Ex. 148 in Evid.  
 9 received and marked)  
 10 BY MR. WHARTON:  
 11 Q. Miss MacIntyre, let me show you State's  
 12 Exhibit 148 and ask you to take a look at that. Is  
 13 that the agreement you entered into with law  
 14 enforcement?  
 15 A. Yes, it is.  
 16 Q. It's dated when?  
 17 A. February 27th, 1998.  
 18 Q. By whom is it signed?  
 19 A. It's signed by Colm Connolly, Ferris  
 20 Wharton, Thomas Bergstrom and me.  
 21 Q. Now, as a result of that agreement, are  
 22 you going to be prosecuted for any crime --  
 23 A. No, I am not.

1 Q. Yes.  
 2 A. "First, your client represents that she  
 3 did not kill or conspire to kill or aid or abet the  
 4 killing of Anne Marie Fahey. If that representation  
 5 proves to be false, the government would not be bound  
 6 by the terms of this agreement."  
 7 Q. Are those representations true that you  
 8 made?  
 9 A. Yes, they are.  
 10 Q. And if they were not true, could you be  
 11 prosecuted for anything and everything that you've  
 12 done?  
 13 A. Yes, I could.  
 14 Q. Did you also agree to cooperate with the  
 15 federal and state authorities in the investigation of  
 16 Anne Marie Fahey's death?  
 17 A. Yes, I did.  
 18 Q. If you could read paragraph fifth?  
 19 A. "Fifth, your client understands that any  
 20 statement she makes pursuant to this agreement  
 21 are --"  
 22 Q. This letter is addressed to your  
 23 attorney, Mr. Bergstrom, right?

1 employed?

2 A. Most recently I worked at the Tatnall  
3 School.

4 Q. How long did you work at Tatnall School?

5 A. About twelve and a half years.

6 Q. When did that employment end?

7 A. In February of this year.

8 Q. What did you do at the Tatnall School?

9 A. I was an administrator. I ran the before  
10 and after-school program. It was called the extended  
11 day program, and I also ran the summer program for  
12 about five years of that period.

13 Q. Do you know the defendant, Thomas Capano?

14 A. I do.

15 Q. How long have you known him?

16 A. Since about 1977.

17 Q. How did you meet him?

18 A. I believe I met him at a law firm  
19 function.

20 Q. Were you married then?

21 A. Yes, I was.

22 Q. To whom were you married?

23 A. David H. Williams.

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1 Q. When you say law firm function, what law  
2 firm are you referring to?

3 A. Morris, James, Hitchens and Williams.

4 Q. Was your husband employed by that law  
5 firm?

6 A. Yes, he was.

7 Q. He was not the Williams at the end of  
8 that?

9 A. No; that was his father.

10 Q. Was the defendant employed by that law  
11 firm?

12 A. Yes.

13 Q. At some point did you begin a relation-  
14 ship with the defendant?

15 A. I did.

16 Q. Was that a sexual relationship?

17 A. Yes, it was.

18 Q. When did that sexual relationship begin?

19 A. In May of 1981.

20 Q. Were you married at the time?

21 A. I was.

22 Q. Was he married at the time?

23 A. He was.

1 Q. Did that relationship continue for a  
2 period of time?

3 A. Yes, it did.

4 Q. Would it be fair to say that it continued  
5 up through 1996 and 1997?

6 A. Yes, 1997.

7 Q. When you would get together while you  
8 were married, where would you get together?

9 A. In a motel usually.

10 Q. Was there any particular motel?

11 A. There was a motel on Route 9 near the  
12 Delaware Memorial Bridge. I believe it's called  
13 Motel 6.

14 Q. Was there any particular time or routine  
15 day when you would get together at Motel 6?

16 A. At that time I'm not sure what day it  
17 was, but it was usually the same evening every time.

18 Q. Did it evolve into a particular day of  
19 the week?

20 A. Yes. I don't remember what day it would  
21 have been; maybe a Wednesday or a Thursday.

22 Q. What were your -- how long -- as this  
23 relationship continued, were there any break-up's in

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1 the relationship?

2 A. Yes.

3 Q. How many?

4 A. One in particular I recall. I cannot  
5 recall the year. It would have been in the fall,  
6 maybe October. October.

7 Q. How long did that last?

8 A. About five weeks.

9 Q. Who wanted to end it when it ended?

10 A. Tom Capano did.

11 Q. Who wanted to get back together when it  
12 got back together?

13 A. I did.

14 Q. Did you and he talk during this time  
15 period, talking about pre-1995, did you and Tom  
16 Capano talk about the future of your relationship?

17 A. Not really, no.

18 Q. Did he ever talk to you about whether or  
19 not he would leave his wife?

20 A. No.

21 Q. Did he have children?

22 A. Yes.

23 Q. Was your relationship public?



1 there's him to contend with? Afraid, you said of  
2 what? Pointless, groundless, hollow noises from  
3 Connolly? I've told you a hundred times you have  
4 nothing to worry about.

5 "Do I now have to worry about you? I can  
6 feel myself getting angry and again feeling the sense  
7 of betrayal I felt when you abandoned me at the bail  
8 hearing. Do you love me or not? Do you know what  
9 love is, Debby?"

10 Q. Skip down to a third of the way from the  
11 bottom.

12 A. "You must now prove your love to me.  
13 Everything you've done for nearly a month sends the  
14 message you don't love me and perhaps never did. I  
15 cannot survive with that uncertainty. Ambivalence  
16 would be worse than knowing you no longer love me.

17 "There is only one way now for you to  
18 prove your love clearly, completely and  
19 unequivocally, and also to demonstrate that your act  
20 abandoning me when I most needed you was not  
21 something you will ever do again.

22 "This is my ultimatum and this is your  
23 choice. Me or your lawyer. You cannot straddle the

1 strangers.

2 "I'm imprisoned and will soon be on trial  
3 for my life. You have been the victim of rumor and  
4 negative press and have no legal concerns and a zero  
5 chance of any future legal problems.

6 "What I just said is true regardless of  
7 any empty noises Connolly may spread to the press or  
8 your new lawyer. Debby, you know Connolly is a liar  
9 and cannot be trusted or believed.

10 "So I will sacrifice the services of  
11 friends who have been my attorneys for eighteen  
12 months, Charlie, thirteen months, Joe four months,  
13 Gene, to -- eighteen months Charlie, thirteen months  
14 Joe, four months Gene, to demonstrate my devotion and  
15 relieve you of any concerns you may have about them,  
16 although you have never expressed any.

17 "And Debby, they have never asked me to  
18 give them letters I received from you. We talked  
19 about you Wednesday night as I told you, and for the  
20 second week in a row about your legal situation, at  
21 my insistence. After those three experienced  
22 Delaware lawyers who are my friends assured me for  
23 the second --"

1 fence. You must choose between us. If you choose  
2 him, please return all my letters for the sake of  
3 whatever you once thought of me and write me to  
4 explain why you chose him.

5 "I don't really care if you like him.  
6 There are other lawyers who will not try to drive a  
7 wedge between us. If you choose me, I will gain the  
8 strength to survive and endure. I will know your  
9 betrayal was an isolated act. I will protect and  
10 stand by you forever.

11 "This does not seem to be any big deal.  
12 In fact, it should be a no brainer. Lawyers are a  
13 dime a dozen. True love is rare. I need you now.  
14 He doesn't. And you don't need him. Plus it will  
15 take Dave Williams out of the equation which has  
16 caused me more pain than you know. To prove that  
17 this is no monetary flash of a broken heart --"

18 Q. I think that has "momentary".

19 A. "To prove take this is no momentary flash  
20 of a broken heart, I make the same offer to prove my  
21 love for you. I will fire Charlie, Joe and Gene to  
22 prove you mean more to me than any stranger. In  
23 fact, in my case, they are all friends, not

1 Q. Let me stop you there. Tom Bergstrom,  
2 your new lawyer at that time, where did he have his  
3 office?

4 A. In Malvern, Pennsylvania.

5 Q. So after he said "those three experienced  
6 Delaware lawyers," would you continue reading please?

7 A. "After those three experienced Delaware  
8 lawyers who are my friends assured me for the second  
9 week in a row that you were in no danger with a teeny  
10 tiny possibility that Connolly would threaten you  
11 with perjury because of the date we first had sex,  
12 after all that, Gene looked at me and said 'you  
13 really do love her, don't you,' and I told him I  
14 loved you with all my heart despite everything and  
15 that I would never let anything happen to you, even  
16 if I had to swear under oath that we never had sex  
17 until whatever date you needed me to say.

18 "I will give them all up. I will  
19 sacrifice the huge amount of money I've already  
20 spent. I ask only that you give up someone who is a  
21 stranger, not a friend, someone you've known for only  
22 a few weeks and met only a few times, someone who  
23 cannot have cost you much yet, someone somehow

1 connected to Dave Williams, someone who wants you to  
2 refuse my calls and turn over my letters so he can do  
3 whatever he wants with them, someone who doesn't care  
4 and probably didn't ask if you loved me, someone who  
5 doesn't care about me as my present lawyers care  
6 about you.

7 "I'm willing to give up a hundred dollar  
8 bill and ask only that you give up a penny. There is  
9 no reason for you to decline if you care about me  
10 since this guy obviously wants to cause me harm. My  
11 lawyers mean you no harm and have even done things to  
12 help you.

13 "And as a practical matter, if the one in  
14 a million possibility happens and Connolly tries to  
15 charge you with lying to the grand jury because of  
16 your characterization of our relationship, a judge  
17 would dismiss the charge even before a jury threw it  
18 out.

19 "Your new lawyer could not even represent  
20 you because he's not a Delaware lawyer. The only way  
21 he could be involved is if you hire a Delaware lawyer  
22 to work with him and thus pay for two lawyers. We  
23 will both find new Delaware lawyers. You should not

1 I doubt I ever will because I will then know that you  
2 have lied to me all these years and never truly loved  
3 me. Dave Williams?"

4 Q. Tab 16. This is dated when?

5 A. Thursday, February 26th.

6 Q. This is the third letter of that date?

7 A. Correct.

8 Q. When did you go in to see the government?

9 A. Friday, February 27th.

10 Q. Turn to page two and read the highlighted  
11 portions which begins at the second paragraph.

12 A. "Since you know better than anyone the  
13 fragile condition of the man you love, I have to hope  
14 the choice I asked you to make to give me heart and  
15 reassurance was an easy one for you.

16 "I hope you understand why it had to  
17 happen now and how utterly crucial it was to me and  
18 to us. It may help me avoid a nervous breakdown. It  
19 may be the tie that truly binds us together.

20 "As I said, I asked you to sacrifice a  
21 penny compared to my sacrifice of a hundred dollar  
22 bill. I know it didn't mean much to you or cost you  
23 any emotional capital, but it means a great deal to

1 even have to think about this for all the reasons  
2 I've listed.

3 "And more important than the reasons is  
4 the simple fact that the man you profess to love has  
5 asked you to do it because he needs reassurance. I  
6 can't believe you will decline to do it, but if you  
7 do, I'll know for certain you do not love me.

8 "What will haunt me, of course, is the  
9 question of whether you ever did. This relationship  
10 has not cost you anything. It demanded something of  
11 you."

12 Q. I'm sorry?

13 A. "This relationship has never cost you  
14 anything."

15 Q. I think that says "the first time".

16 A. "The first time it demanded something of  
17 you, you were not willing to pay the price. Now it's  
18 demanding something again, and this time with damn  
19 good reason, which is of insignificant cost to you.

20 "I've offered to pay a great cost in  
21 exchange although you have absolutely no reason to  
22 need reassurance. Do you love me? If you don't,  
23 then I need to know so I may try to recover, although

1 me and inspires me to fight for us and our future.

2 "Because I am so confident that you chose  
3 me, my sanity and my health, my heart, my love, that  
4 I'm going to thank you now for your devotion and  
5 unconditional love. I thank you for trusting me  
6 again and making your love tangible. We will win  
7 this, Deb. We will have a future."

8 Q. If you could turn to the last page of  
9 that letter, the PPPS.

10 A. "Remind me to tell you about my friend  
11 Nick Perillo, the guy who has tried to call you for  
12 me a few times and may again depending on what  
13 punishment I receive.

14 "He has the paper that got confiscated  
15 when he slid it back under my door around 9:00 last  
16 night when he tried to call but got the machine. Do  
17 you get those messages?"

18 MR. WHARTON: Your Honor, I notice the  
19 time, Your Honor.

20 THE COURT: We'll take our morning recess  
21 at this time and I'll ask the bailiff to remove the  
22 jury. I'll ask the people in the audience to remain  
23 seated.

(The jury left the courtroom)

THE COURT: Court will stand in recess.

(At this time a short recess was taken).

MR. WHARTON: Your Honor, I think counsel would like to speak with the court at side bar.

THE COURT: All right. On the record?

MR. WHARTON: Yes.

(Side bar conference):

MR. WHARTON: Your Honor will recall this morning Mr. Maurer suggested there might be an issue to discuss at side bar prior to the cross-examination, and winding down the direct, I expect we will start the cross-examination before lunchtime. So this is an appropriate time now I guess to bring that up.

MR. MAURER: I had a conversation actually with Mr. Wharton and Mr. Connolly about this, and during the course of my examination of Miss MacIntyre, I intend to ask her specifically whether when she went to Grant Avenue in June, the 27th, 28th of '96, whether she had a firearm with her when she went over there and whether she discharged the firearm.

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I had wanted to bring that up initially. I anticipated at that time the State might object to that line of questioning and argue that if the defendant doesn't testify I don't have a good faith basis for asking that question. We flushed that out. I don't think that there is an objection to my asking the question and an additional basis which thought I had the basis to ask the question about was the immunity agreement where she makes specific representations that she did not kill, conspire to kill or assist in the killing.

MR. CONNOLLY: Judge, just to further flush it out somewhat, as Mr. Maurer just alluded to, we just want it clear that in order for Mr. Maurer to have a good faith basis to ask this question, his client must have provided some kind of account such that if the client were to take the stand at some point and testify differently it would raise ethical concerns.

We're very comfortable with Mr. Maurer's ethics, so I just wanted to put it order record to protect ours, not because of anything we think about Mr. Maurer.

MR. MAURER: Thank you, Mr. Connolly.

I'm pretty comfortable with my ethics for the most part at this point.

MR. CONNOLLY: I think it's fair for us to put it there.

MR. MAURER: I didn't mean to be pejorative when I said that.

MR. WHARTON: There are a couple of other issues that may get broached during cross-examination. She has testified or actually she has read some letters in which she makes and breaches some what would otherwise be confidential communications with her lawyer Adam Balick, and perhaps that could be viewed as a waiver of confidential communications to go beyond what is in the letters.

I don't know what Mr. Maurer intends to do. I don't think he intends to go into that, but I do think that if that's the case, that reciprocity ought to follow inasmuch as the defendant has made also breaches of confidentiality in his correspondence to Debby so that if we stray beyond what is in the letters with respect to Adam Balick

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and Debby MacIntyre, we should be given license to stray beyond communications between the defendant and his lawyers beyond which what appear in the letters.

MR. MAURER: I understand the State's position on that and obviously Tom's breached our attorney-client privilege considerably already with the letters that are in. It's not really my intent to cross-examine in that area.

THE COURT: That's a substantial issue, and I don't want to make a superficial ruling here because I think there are a lot of problems as to whether you can make a partial disclosure and whether that can be compartmentalized or not, and I'd prefer not to make a decision in that area, but it seems to me at this particular stage -- clearly I hate to fall back on trite sayings, but what's sauce for the goose is sauce for the gander, we know that.

MR. WHARTON: It's getting close to Thanksgiving so that may be an appropriate reference.

The other issue involves communications she had with Joe Hurley. As the Court is aware, he was the lawyer for Mr. Capano. If we get into -- I understand Mr. Maurer may ask about those

1 communications.

2 That raises a similar sort of related  
3 issue in terms of if Mr. Hurley testifies as a  
4 defense witness, the scope of cross-examination  
5 there. We're not looking for a resolution of that  
6 right now but simply to say that this is out there,  
7 and I wanted to put our concerns on the record about  
8 whether they lead to the waiver of certain work  
9 product information.

10 THE COURT: I thought you were going to  
11 tell me that Miss MacIntyre was a part of the Capano  
12 team and therefore all those communications were  
13 privileged.

14 MR. MAURER: If I can just add to that,  
15 Joe Hurley interviewed her when he became involved in  
16 the case, and he took a statement from her and we  
17 have a memorandum of what she told him and that's in  
18 some respects inconsistent with what she's testified  
19 to here today, and that's the purpose that I want to  
20 ask her those questions. We plan to call Joe Hurley  
21 as a witness.

22 MR. CONNOLLY: There's another point  
23 which I just thought of. We would take the position

1 that.

2 MR. MAURER: I'm not going to question  
3 her about that interview.

4 MR. WHARTON: I'm just saying that that  
5 topic raises some work product waiver issues and  
6 cross-examination issues if Mr. Hurley testifies.

7 MR. MAURER: We'll see what we are.

8 THE COURT: They have a lot of issues out  
9 there.

10 MR. MAURER: I can't not cross-examine  
11 her.

12 (Side bar conference ended)

13 THE COURT: Please bring the jury in.

14 (The jury returned to the courtroom)

15 THE COURT: Mr. Wharton.

16 MR. WHARTON: Thank you, Your Honor.

17 CONTINUED DIRECT EXAMINATION

18 BY MR. WHARTON:

19 Q. Miss MacIntyre, the defendant wrote you  
20 three letters dated Thursday, February 26th of 1998,  
21 the day before you went in to speak to the  
22 government. You also wrote him a letter on February  
23 26th of 1998, did you not?

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1 not only that we get Joe Hurley's interviews of her  
2 but Charlie interviewed her too, and we would want  
3 Charlie's notes and any notes.

4 It's attorney work product relating to  
5 interviews of her, and once you waive it with Joe  
6 Hurley, you waive it for everybody.

7 MR. OTERI: That's an expansive  
8 interpretation.

9 MR. MAURER: We don't agree with that.  
10 There was also an interview that Charlie had with her  
11 on August 16th of 1996 when Mr. Vaulles was present,  
12 an investigator who will also be called to testify.  
13 I don't think we have any problem in turning those  
14 notes over.

15 MR. OBERLY: In fact, Your Honor, I was  
16 the stenographer. I did not conduct the interview.  
17 I wrote the notes. Somebody else did.

18 THE COURT: I'm proud that you have that  
19 talent.

20 MR. CONNOLLY: You interviewed her first  
21 week of July as well.

22 MR. OBERLY: On the telephone.

23 MR. CONNOLLY: If you have notes for

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1 A. Yes, I did.

2 Q. Would you turn to tab forty please. The  
3 first paragraph that's highlighted, could you read  
4 that?

5 A. "About me not testifying, yes, it made me  
6 look bad and the media took shots at me. What else  
7 is new? Yes, my self is damaged, and I may (no did)  
8 have lost my job as a result of the publicity.

9 "But I must be open with you. I never  
10 could lie, never can lie well about anything and  
11 that's been so evident in our relationship. Any  
12 little thing you picked up, and that's okay because I  
13 think it's a good thing to be honest.

14 "I know you wanted to tell me what to  
15 say, but no amount of practice could make it seem  
16 real. I knew it when it came out, I didn't blow it,  
17 I just didn't lie well".

18 Q. What were you talking about?

19 A. I was talking about the story about the  
20 gun.

21 Q. Was that in the January 28th interview?

22 A. Correct.

23 Q. Would you turn to the next page please.



1 About the middle of the page there's a highlighted  
2 paragraph.

3 A. "Tomorrow will be a big day for me. I  
4 know you called me tonight while I was out. I got  
5 home at 10:30 p.m. and your last attempt was 10:24  
6 p.m. "

7 Q. "Tomorrow will be a big day for me," what  
8 are you referring to?

9 A. The meeting that I had with you on  
10 Friday, February 27th.

11 Q. Go ahead.

12 A. "I know you called me -- I am wondering  
13 if you knew of the media news then. If I had talked  
14 with you, I would have told you I was going to be  
15 truthful, that is the only way. I don't know what  
16 the truth will do. Will it hurt you? I don't know  
17 what the defense case is nor do I know what the  
18 prosecution case is.

19 "Today I received a letter from you that  
20 was written from the heart and it made me cry for  
21 both of us who can't hold onto each other. You think  
22 I have betrayed you. I have not. I have told the  
23 truth and we must both live with the truth.

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1 "I know completely for sure without a  
2 doubt you love me. I never doubted your love. Some  
3 letters were horrible and I could not read them. But  
4 some of it was true. I had been walked over most of  
5 my life and by you for sure. I guess I let the man  
6 of my life walk over me more than anyone else.

7 "You can build me up and point out my  
8 strengths better than anyone. When down, I have been  
9 encouraged by you, but you can trash me like no other  
10 as well. I'd like to think that I know you better  
11 than anyone, but maybe I don't. Yes, we are one,  
12 soul mates. For me there is no way that can be taken  
13 away regardless."

14 "Often I wonder why all this tragedy had  
15 to happen. What happened and why are you involved?  
16 Will you ever be able to tell me? I think not, and  
17 that will always keep us apart. Tom, I hope you are  
18 still reading this."

19 Q. On Friday, February 27th, you testified  
20 you came in and spoke to Mr. Connolly and me and  
21 other investigators, correct?

22 A. Correct.

23 Q. Did you tell us about the gun?

1 A. Yes, I did.

2 Q. What did you tell us about the gun?

3 Whose idea was it to get the gun?

4 A. It was Tom Capano's idea to get the gun,  
5 for me to purchase the gun.

6 Q. Is that what you told us on February  
7 27th?

8 A. Yes.

9 Q. And what you testified on direct  
10 examination earlier about the gun, and what you did  
11 with it, is that essentially the story you told us on  
12 February 27th?

13 A. That is correct.

14 Q. The next day and into a couple of days  
15 later, you continued that letter, did you not?

16 A. Yes, I did.

17 Q. There is a portion after you concluded  
18 the February 26th segment of it dated Saturday,  
19 February 28th to Monday, March 2nd, 1998.

20 Would you look at the last page there  
21 please and there is a highlighted portion. Would you  
22 read that?

23 A. "It has been good to hear your voice

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1 again. Truthfully, I never expected to hear from you  
2 again and am curious but pleased that you have called  
3 me. I have also been advised to not write to you, but  
4 I have been wanting to do so for a long time.

5 "Our conversation of last night bothered  
6 me and I know we got cut off in the end. I spent  
7 most of the night thinking about it. I am serious in  
8 writing that I really don't understand why you would  
9 change your lawyers to prove your love for me.

10 "Tom, that does not make sense to me, but  
11 worries me as I think you believe that's how you show  
12 your love. That shouldn't be. For me, changing  
13 lawyers is not proving to you that I love you. I  
14 have endured too much emotional torture in the past  
15 eighteen months and know I could not mentally or  
16 physically make another change without compromising  
17 my health.

18 "I am tapped out and can take little  
19 more. Besides, I like him and believe in him. As  
20 you don't know him, you cannot see that. But if you  
21 love me, you will support me for the choices I have  
22 made.

23 "You have said or written that you are a

1 drowning man and I can really identify with that. I  
2 feel like I am drowning too, but not with you. I  
3 want so much to preserve in my mind and heart what we  
4 have had together.

5 "What has been difficult for me is that  
6 few have been able to understand that despite all  
7 that has surpassed that I still love you. My  
8 therapist asked me today why I feel that way, and I  
9 told him that you have always been there for me in  
10 times of trouble.

11 "You respect me and my openness and  
12 honesty. You are my best friend. You listen well  
13 and you love me completely. If all of this is true,  
14 then you must understand deep in your heart why I  
15 have been so truthful and honest. That is me.

16 "It doesn't mean I don't love you. It  
17 hurts more than anything to read some of your words  
18 that are written right along with your words of love.  
19 I am more than a little confused but know you are way  
20 beyond that.

21 "There is nothing I can say or write to  
22 you that will convince you that I love you now and  
23 forever. If you do love me as you say you do, you

1 for identification, thank you.

2 (PHOTOGRAPH, State's Ex. 149 in Evid.  
3 received and marked).

4 (DOCUMENT, State's Ex. G for I.D.  
5 received and marked)

6 BY MR. WHARTON:

7 Q. Miss MacIntyre, let me show you State's  
8 Exhibit 149 and ask you do you recognize what is  
9 depicted in that photograph?

10 A. Yes, I do.

11 Q. What is depicted in that photograph?

12 A. That is my house.

13 Q. Let me show you what's been marked as  
14 State's for identification G and ask you to take a  
15 look at that. First of all, do you recognize on the  
16 front page of that the printing?

17 A. Yes, I do.

18 Q. Whose printing do you recognize it to be?

19 A. Tom Capano's.

20 Q. Would you turn the page please? Do you  
21 recognize what's depicted on the second page?

22 A. Yes, I do.

23 Q. What do you recognize that to be?

1 must trust and believe my words. I have nothing to  
2 gain or lose by writing about my feelings for you now  
3 as I believe I have lost you too.

4 "I want to believe more than anything  
5 that we will both go to our eventual destinies in the  
6 future knowing that both of us have been loved and  
7 have loved completely."

8 Q. Miss MacIntyre, you told us that you  
9 lived on Delaware Avenue. What is the address there?

10 A. 2425 Delaware Avenue.

11 MR. WHARTON: Your Honor, I want to offer  
12 this as next State's exhibit and have this next item  
13 marked for identification.

14 MR. MAURER: No objection to either  
15 document.

16 THE COURT: Thank you, Mr. Maurer. It  
17 will be admitted without objection as State's Exhibit  
18 149.

19 THE CLERK: So marked.

20 MR. WHARTON: The other item is to be  
21 marked for identification.

22 THE CLERK: State's identification G.

23 THE COURT: Whatever you say. State's G

1 A. It's a map to my house.

2 Q. From where to where? Coming from what  
3 direction?

4 A. Coming from town to out of town towards  
5 Rockford Park.

6 Q. Does that depict the various streets to  
7 where your house?

8 A. Yes.

9 Q. Turn to page -- is it accurate?

10 A. It is very accurate.

11 Q. Can you turn to the next page please? Do  
12 you recognize what's depicted on that page?

13 A. Yes, I do.

14 Q. What do you recognize that page to be?

15 A. A floor plan of the first floor of my  
16 home, and a diagram of my alarm box.

17 Q. Is it an accurate diagram of the floor  
18 plan of the first floor of your home?

19 A. That is correct.

20 Q. Does it detail -- there are certain  
21 details on that.

22 MR. MAURER: Your Honor, I understand  
23 this is for purposes of identification at this point

1 after that, whether it was early summer, spring, late  
2 summer, whenever?

3 A That is correct.

4 Q But whenever you did it - and I'll show  
5 you both of those documents and I guess,

6 MR. MAURER: Is there any objection to  
7 them? Admissibility? Okay.

8 BY MR. MAURER:

9 Q If I could show you both those documents  
10 and ask you if in fact if they are the documents you  
11 prepared? And take a minute to look at them.

12 A Yes, they are.

13 Q Are they?

14 A Yes.

15 Q Thank you.

16 MR. MAURER: Your Honor, I would like to  
17 move both those documents into evidence as --

18 THE CLERK: 1 and 2.

19 THE COURT: Defendant's Exhibits 1 and 2;  
20 is there objection?

21 MR. WHARTON: No, Your Honor.

22 THE COURT: Without objections defendant's  
23 Exhibits 1 and 2 may be admitted.

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1 THE CLERK: So marked.

2 THE COURT: Thank you.

3 MR. MAURER: Thank you, Your Honor.

4 (WHEREUPON, documents are received and  
5 marked Defendant's Exhibits 1 and 2 in evidence)

6 MR. MAURER: Thank you, Your Honor. I  
7 apologize; something we needed to discuss.

8 BY MR. MAURER:

9 Q When is the first time you spoke with  
10 the authorities after, according to your testimony,  
11 now, as to the purchase of the firearm at Miller's?

12 A My attorney or --

13 Q You?

14 A When I spoke with anybody?

15 Q I'm sorry. To the government.

16 A February 27th, 1998.

17 Q And when you spoke to the individuals for  
18 the government as opposed to your attorney, - and  
19 what I'll try to do, if I ask you a question about  
20 your attorney I'll refer to him specifically. Okay?  
21 But when you spoke to the government February 27th,  
22 that was the first time you did that. Is that  
23 correct?

1 A That's correct.

2 Q And when you talked to them, in  
3 particular, the person who is a witness in the case,  
4 and not going to be a witness, was Det. Donovan, is  
5 that right? He was there?

6 A Yes, he was.

7 Q He was there?

8 A Yes, he was.

9 Q And other individuals were there as well?

10 A Yes.

11 Q But I'm focusing primarily on Det.  
12 Donovan. Did you tell Det. Donovan everything that  
13 had occurred with regard to the purchase of this  
14 firearm?

15 A Perhaps some specifics had evolved later  
16 and I could add them later, but I cannot tell you  
17 exactly that I did at that time.

18 Q Okay. For example, Mrs. MacIntyre, did  
19 you reveal to Det. Donovan at that time that you had  
20 gone to the Sports Authority on a prior occasion to  
21 purchase a firearm?

22 A I don't recall.

23 Q By you don't recall, if you are going to

Page 8

1 use that term, could you tell me exactly what you  
2 mean by that?

3 A I don't know if I had said anything to him  
4 about going to Sports Authority at that time, or if I  
5 told him later.

6 Q Why, if you didn't tell him something  
7 about that at that time, why would you not have told  
8 him that?

9 A I wasn't asked.

10 Q You weren't asked?

11 A Perhaps.

12 Q You were asked about the purchase of the  
13 firearm. I can represent that to you, on February  
14 27th, and you have already indicated to me that you  
15 talked about that on February 27th. Did you not?

16 A Correct.

17 Q Okay. And what you're saying is that if  
18 you didn't mention to Det. Donovan on February 27th  
19 when you first spoke with him about this purchase,  
20 that you had previously gone to Sports Authority, the  
21 reason you didn't mention it is because you weren't  
22 asked?

23 A Perhaps if I could see a document about

1 that meeting I could tell you for sure whether I said  
2 anything or not. I don't really remember, Mr.  
3 Maurer.

4 MR. MAURER: Your Honor, I don't know if  
5 the state will have any objection to this, if I could  
6 just take a moment?

7 THE COURT: You may.

8 (WHEREUPON, there is a discussion off the  
9 record)

10 BY MR. MAURER:

11 Q Mrs. MacIntyre, what I'm going to do at  
12 this point, with consent, is show you a police report  
13 dated February 27 of 1998, prepared by Det. Donovan.

14 First of all, with the understanding you  
15 probably have not seen this before, right?

16 A That is correct.

17 Q And this police report purports to discuss  
18 what you discussed with him on that date. Okay? So,  
19 if you would like to take a moment and look through  
20 there, first, and then I'll have some questions to  
21 ask of you.

22 A (Witness complies)

23 Q Have you had an opportunity to read

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1 through those four pages?

2 A Yes, I have.

3 Q And would you agree, understanding these  
4 are someone else's notes prepared based on your  
5 interview, that there is no mention whatsoever in  
6 those notes of your trip to the Sports Authority?

7 A No, there is not.

8 Q Okay. So, do you think now, having looked  
9 at those notes and having thought about it a little  
10 bit that you never mentioned that to Det. Donovan  
11 when you spoke him on February 27th?

12 A That's probable.

13 Q Okay. And isn't the reason that you  
14 didn't mention it at that time because, later, when  
15 you talked to Det. Donovan about the purchase of the  
16 gun, which I believe was on April 25 of 1998, you  
17 told him that you didn't even look at these forms  
18 that you signed until after you got out in the car,  
19 after the gun purchase.

20 Do you remember saying that to Det.  
21 Donovan, later?

22 A No, I do not.

23 Q You don't recall saying that to him?

1 A I remember signing them in the store, and

2 yes, looking at the one form very clearly when I got  
3 out of the store.

4 Q But the point of the matter is that when  
5 you were talking to Det. Donovan on February 27th  
6 about the gun purchase, and the signing of the forms,  
7 you knew before you ever went to Miller's, that it  
8 was illegal to purchase a gun for someone else,  
9 didn't you?

10 A That is correct.

11 Q Okay. And today you're saying that.  
12 Correct?

13 A That is correct.

14 Q Now when you talked to Det. Donovan,  
15 however, on the 27th of February, you didn't mention  
16 the fact that you had been to the Sports Authority  
17 and you didn't mention the fact that the person  
18 behind the register told you at that time that it was  
19 illegal?

20 A That is correct.

21 Q Now, is the reason that you didn't mention  
22 it still that you weren't asked? Or did you have  
23 some other motive for not mentioning that when you

Page 12

1 spoke with him on the 27th of February?

2 A No. Many things evolved in this case.  
3 Information -- I was very nervous on  
4 February 27th.

5 I answered the questions that I was asked,  
6 and I was not thinking about the Sports Authority.

7 I was thinking about Miller's Gun Shop.

8 Q Okay. So, you completely forgot about  
9 another trip that you had made to a store in order to  
10 purchase a firearm.

11 Is that what you're saying?

12 Or you didn't think about mentioning that?

13 A I was not thinking about Sports Authority.

14 No.

15 Q And you weren't asked, so, you didn't  
16 bring it up. Is that right?

17 A That's probable.

18 Q Now, you testified, or you indicated to  
19 Det. Donovan, or did you indicate to Det. Donovan on  
20 February 27th, in your interview, that you didn't  
21 read the paperwork saying it was illegal to purchase  
22 the firearm until after lunch?

23 A I don't understand the question.



1 Q All right. Let me repeat it:

2 You spoke to Det. Donovan on February  
3 27th. Did you say to Det. Donovan, that you didn't  
4 read the paperwork regarding the purchase of the  
5 firearm saying that it was illegal, until after you  
6 and Tom had had lunch?

7 A I pulled the paper out of the bag and  
8 showed it to him. I thought I did it as soon as I  
9 came out of the store. I recall that. If I did it  
10 after lunch, that's possible as well. But I remember  
11 that specifically.

12 Q I'm not asking you at this point when you  
13 did it or if you didn't do it. What I'm asking you  
14 is whether you have a recollection of telling Det.  
15 Donovan that the first time that you looked at the  
16 paperwork was after lunch.

17 Do you remember telling him that?

18 A No, I do not.

19 Q How many people were in the store at the  
20 Miller's purchase?

21 A I could not tell you that.

22 Q By the way, back up for just a minute.

23 You did go to Sports Authority.

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1 You do concede that now?

2 A I did go to Sports Authority.

3 Q Do you remember when you went there?

4 A I believe it was some time in April.

5 Q April of '96, is that correct?

6 A Correct.

7 Q All right. And when you went to the  
8 Sports Authority, did Tom go with you?

9 A No, he did not.

10 Q So, you went on your own?

11 A I went at his request - on my own.

12 Q Do you understand my question to you was,  
13 did you go on your own?

14 A I did.

15 Q Okay. Now, before you went to Sports  
16 Authority and you had every intention to make a  
17 purchase if that was appropriate at the time, you  
18 indicated that you went at Tom's request and he had  
19 asked you to do this. Is that right?

20 A Yes.

21 Q Now, and, did you discuss with him how  
22 this purchase was going to be made in terms of paying  
23 for it?

1 A No.

2 Q Did he say to you, - make the purchase in  
3 cash?

4 A No.

5 Q Did he tell you not to use your credit  
6 card?

7 A No.

8 Q Did he tell you not to use a check?

9 A No.

10 Q All right. Did he tell you specifically  
11 what type of gun you were to purchase?

12 A No.

13 Q .25 caliber? .22 caliber? .38 caliber?  
14 None of that?

15 A No.

16 Q You said that you purchased bullets at  
17 Miller's, correct?

18 A Yes.

19 Q Did Tom ask you to buy the bullets?

20 A No.

21 Q That was something that you did when the  
22 store person suggested that to you, is that right?

23 A That is correct.

Page 16

1 Q So, you discussed none of these things  
2 according to you before the purchase was made, with  
3 Tom?

4 A Could you say that again, please.

5 Q You discussed none of the things we just  
6 talked about, before the purchase was made, with Tom.  
7 How to pay, what to pay with, - cash, check, credit  
8 card, what type of gun, what type of bullets. None  
9 of that stuff was discussed. Is that right?

10 A We spoke about a type of gun but not  
11 specifically.

12 Q So the answer to my question then is that  
13 none of those things I just asked you were discussed  
14 beforehand?

15 A That is correct.

16 Q Actually, Mrs. MacIntyre, you were  
17 required to sign three documents when you made your  
18 purchase of May 13, of 1996. Is that right?

19 A That is correct.

20 Q Okay, and there were three separate  
21 documents submitted to you by the salesman that  
22 required your signature; is that right?

23 A Yes.

1 Q And you've seen these in direct  
2 examination, correct?

3 A Yes, I have.

4 Q And, if I could first go over with you  
5 number 136.

6 That is your signature, is it not?

7 A Yes, it is.

8 Q Okay. Now when you made this purchase,  
9 it's you and a salesman, right?

10 A Yes.

11 Q Talking to each other. Is that right?

12 A Correct.

13 Q Okay. And the salesman is I guess asking  
14 you questions and talking to you about things, and in  
15 particular for whom you're purchasing the firearm,  
16 right?

17 A Correct.

18 Q And he just like you and I are except he  
19 is a lot closer to you than at this point, just the  
20 two of you are discussing this transaction; is that  
21 right?

22 A That's right.

23 Q All right. The salesman gives you the

Page 18

1 form. And the first one says, "I, Deborah MacIntyre,  
2 residing at 2625 Delaware Avenue, hereby affirms,  
3 under the penalties of perjury" - and you understood  
4 at that time what perjury was, did you not?

5 A Yes.

6 Q Just like you understand today what  
7 perjury is, right?

8 A That is correct.

9 Q And that's basically lying after you take  
10 an oath and promise that you won't lie, right?

11 A Yes.

12 Q You then say that you're purchasing the  
13 following firearm for "my personal, recreational,  
14 sporting, target and/or self-defense use; it is not  
15 my intention to give this firearm to another person".

16 Is that right?

17 A That is correct.

18 Q And on May 13th of 1996 that's what you  
19 swore to. Is that right?

20 A I did.

21 Q You now say that that was a lie. That you  
22 weren't buying this gun for yourself but that you  
23 were buying it to give to Tom Capano, right?

1 A Yes, that is correct.

2 Q The second document states, and this is  
3 Exhibit 137, with the same date. Which is a State  
4 Bureau of Identification Criminal History Record  
5 Check.

6 Now in that document you're told that the  
7 making of any false oral or written statement with  
8 respect to this transaction is a crime punishable as  
9 a felony.

10 Did you read that in the store?

11 A Yes.

12 Q And, nevertheless, that's your signature  
13 there. Is that right?

14 A That is correct.

15 Q And you are saying you committed that  
16 crime today because today you're saying you bought  
17 the gun to give to Mr. Capano is that correct?

18 A That is correct.

19 Q And as you're there talking to the  
20 beguiled store owner, if you are to be believed now,  
21 did you tell that store owner, what you're telling us  
22 now, that the words you're putting down on these  
23 documents as you spoke face-to-face with him, were

Page 20

1 lies?

2 A I did not tell him they were lies.

3 Q So basically talking face-to-face with the  
4 store owner about this transaction, you lied to his  
5 face?

6 A I did lie to him, yes.

7 Q How far was he away from you when you told  
8 him this lie?

9 A Three, four, feet. Close.

10 Q Third document. Again dated May 13th of  
11 1998. By the way, had you ever met this store owner  
12 before?

13 A No.

14 Q No. Did you have anything against him?

15 A No.

16 Q He was just doing his job, right?

17 A I suppose so, yes.

18 Q Once again, on this document which is  
19 State's Exhibit 138, you again are advised that you  
20 must answer the questions correctly and if you are  
21 buying the gun for somebody else you can't do it.  
22 Right?

23 A Yes.

Q Okay. And once again you signed yet a

third document in which you say that you're buying the pistol for, who?

A For Tom Capano.

Q No, no, you didn't say that on this document did you?

A Oh I'm sorry; I said I was buying it for myself, yes.

Q You swore three times May 13, 1996 that the gun that you were buying was being bought for whom?

A Myself.

Q And you told us on Thursday, that the reason you would do this for him is because you loved him and you wanted basically to do what he asked you to do. Is that right?

A That's correct.

Q And you loved him so much that you were willing to commit perjury, according to your testimony now, in order to, - and which would jeopardize yourself and your family. Is that right?

A Yes.

Q That's how strong your love for him was,

A That is correct.

Q And then you met with Det. Donovan on March 13th, you may not know the dates, but they're in the police reports, and again on April 25th okay. On April 25 you were asked by Det. Donovan, okay, the same questions that I just asked you. All right? And do you recall telling him at that time that the first time you spoke with the police, you were thinking about the gun and the possibility it had something to do with the case.

Do you remember telling him that?

A I don't recall that. That's possible.

Q The first time you spoke with the police was on July 23rd of 1996. Was it not?

A I believe it was.

Q Or thereabouts?

A I believe that's correct, yes.

Q And you don't have a recollection today that that's something that you spoke with him about, or said to him?

A It's possible, yes.

Q All right. Do you remember the day that Tom Capano's house was searched?

Page 22

right?

A Yes.

Q When is the first time, Mrs. MacIntyre, that you began to think, - I think we talked about this last week, that this gun might have something to do with this case?

A In the January 28, 1998 interview.

Q Now that is not, is it, what you previously told Det. Donovan?

A Excuse me?

Q I said that's not what you told Det. Donovan when you spoke with him before, is it?

A I was questioned as to why I never connected the two. And I struggled why my thoughts to come up with why I had not, and I believe I've given the reason as to why I did not.

Q Okay; I think my question was, is that what you told Det. Donovan?

A Again, I don't remember. I met with Det. Donovan so many times, I cannot tell you specifically.

Q Let me be very specific. You started again, your cooperation on February 27th, right?

Page 24

A Yes, I do.

Q All right. Did you speak with federal agents on that day?

A Yes, I did.

Q In particular, do you recall speaking with Agents Cobb and Desderio?

A Yes.

Q That would have been July 31st of 1996?

A Right.

Q You then spoke with Det. Donovan again before you went before the grand jury, right?

A That is correct.

Q And that would have been according to the police records that we have, September 6th of 1996.

A Correct.

Q You went before the grand jury, September 10th of 1996, did you not?

A I did.

Q Okay. And then after going before the grand jury, you met again I think with Agent Alpert and others, on 2/4/97.

Do you remember that?

A Yes.

1 document was made at the exact same time, well, not  
2 the exact same time but during that same minute.  
3 Right?  
4 A Yes.  
5 Q So that it would be fair to conclude that  
6 the conversation that you had with Tom, on June 28,  
7 was in fact less than a minute?  
8 A Yes. Could have been, yes.  
9 Q Not two- to five?  
10 A Could have been a minute, could have been  
11 two to five. I couldn't give you an exact time until  
12 you showed me that.  
13 Q When I asked you before, you said it could  
14 are been two- to five minutes. You didn't mention a  
15 minute, did you?  
16 A No, I did not.  
17 Q All right. You have that conversation at  
18 approximately 10:31. And when is the next time you  
19 hear from Tom?  
20 A I believe when he arrived at my home that  
21 evening.  
22 Q Okay. Did you talk to him at all in the  
23 meantime?

1 Q Now, you say that you had not heard of  
2 Anne Marie Fahey as of that time. Is that right?  
3 A That is correct.  
4 Q But when you did find out about her, you  
5 were very upset, weren't you?  
6 A Yes, I was.  
7 Q Basically, you say you learned on July 2nd  
8 that the man that you waited for, for all those  
9 years, and who you wanted to marry, was involved with  
10 a younger attractive woman?  
11 A I don't know if those were my words; but.  
12 Q But you learned that?  
13 A Pardon me?  
14 A But you learned that?  
15 A I learned that.  
16 Q How upset were you?  
17 A I was upset.  
18 Q Angry?  
19 A I was upset.  
20 Q Extremely upset, weren't you?  
21 A Yes, I was.  
22 Q Didn't you in fact find out about Anne  
23 Marie Fahey, not on July 2nd, but on June 27th and

1 A I don't recall that, no.  
2 Q Okay. But, in any event, he came to your  
3 house that evening at about 11 p.m.; right?  
4 A Correct.  
5 Q He stayed overnight at your house, right?  
6 A Yes, he did.  
7 Q And he left the next day at about what  
8 time?  
9 A I believe it was noon.  
10 Q That's Friday. Saturday.  
11 So at noon Tom leaves.  
12 Now we're on Saturday, June 29th.  
13 Now, after seeing him on Saturday and his  
14 departing at around noon, you spoke with him next,  
15 again, when?  
16 A I believe the next day.  
17 Q So, you don't recall speaking with him  
18 again on Saturday?  
19 A I do not.  
20 Q And we then move to Sunday. And this is  
21 when you indicate that he comes to the house at 1  
22 o'clock. Right?  
23 A That is correct.

1 June 28th?  
2 A No, Mr. Maurer, I never heard of Anne  
3 Marie Fahey until July 2nd.  
4 Q Didn't you go to 2302 Grant Avenue on June  
5 27th or June 28th with a firearm to visit Tom?  
6 A Mr. Maurer, I never left my property from  
7 the time I returned home from the Ardens Swim Club  
8 until the next morning when I went to the Tatnall  
9 School.  
10 Q Very strenuous about that, aren't you?  
11 A I am.  
12 Q Didn't you have your firearm at Tom  
13 Capano's house on June 28th of 1996, where you first  
14 learned about him and Anne Marie Fahey?  
15 A No, I did not.  
16 Q And you deny that your firearm discharged  
17 that night inside that house, striking her?  
18 A I don't know what happened with that  
19 firearm. I gave that firearm to Tom Capano on May  
20 13th.  
21 Q You deny that you discharged that firearm?  
22 A I deny that I discharged that time.  
23 Q Are you absolutely certain about that?



1 A I'm certainly about that.  
2 Q Are you absolutely certain?  
3 A I'm absolutely certain.  
4 Q Is that what you say when you're sure of  
5 something?  
6 A Mr. Maurer, I did not know of Anne Marie  
7 Fahey until July 2nd of 1996.  
8 Q Listen to my question, please.  
9 You just said that you were absolutely  
10 certain that you were not at Grant Avenue on June  
11 27th and June 28th, didn't you?  
12 A Correct.  
13 Q And when you say you're absolutely  
14 certain, you're telling the truth and it's true,  
15 right?  
16 A I'm telling the truth about this, yes, I  
17 am.  
18 Q Do you have your statement to the police  
19 dated January 28th of 1998, in front of you?  
20 A No, I do not.  
21 Q Okay. Do we have that here. Yes, we do,  
22 it's with the tape.  
23 Would you turn to page 24, please.

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1 Now, you had told this jury that basically  
2 your January 28th statement is a complete lie.  
3 Right?  
4 A A lot of it is, yes.  
5 Q And on page 24 you used certain language  
6 there to describe things that you talked about. Did  
7 you not?  
8 A Correct.  
9 Q Mr. Connolly said to you, "Did you discuss  
10 with Tom Capano your intention to dispose of the gun  
11 prior to when you got rid of it?"  
12 What was your answer?  
13 A "No".  
14 Q Next question was, "You're very certain  
15 about that?"  
16 What was your answer?  
17 A "Yes".  
18 Q Mr. Connolly said, "Absolutely certain?"  
19 And what was your answer?  
20 A "I am absolutely certain about it".  
21 Q So even though you indicated there that  
22 you were absolutely certain about that, it was a lie,  
23 wasn't it?

1 A Yes, this was a lie.  
2 Q You were then asked some additional  
3 questions, talking about your security system. Mr.  
4 Connolly says where you said, he says, "When did you  
5 first tell him," by, "him" I think you meant Tom,  
6 "that you had gotten rid of the gun?"  
7 Your answer was, "Probably shortly  
8 thereafter. I mean, I did it right away, probably  
9 the next day I told him, say Sunday, right?"  
10 A Correct.  
11 Q Mr. Connolly's next question was, "And  
12 what was his reaction?"  
13 And your answer was what?  
14 A "Got to update your security system."  
15 Q Mr. Connolly then reminded you that you  
16 were under oath. Did he not?  
17 A Yes, he did.  
18 Q And he said, "Are you -- and I want to  
19 remind you that you're under oath."  
20 Your answer was?  
21 A "Yes".  
22 Q He then asked you, "Are you absolutely  
23 certain that Tom Capano never touched that gun?"

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1 And your answer was, what?  
2 A "Yes, to the best of my knowledge."  
3 Q You're also I take it then, -- strike  
4 that. Let me back up.  
5 You were familiar with the furnishings at  
6 Grant Avenue, were you not, having been there?  
7 A Yes.  
8 Q And in deed, you had been in that great  
9 room several times, had you not?  
10 A Correct.  
11 Q You were familiar with the rug that was on  
12 the floor of the great room prior to, sometime in  
13 July, when you first noticed it was missing, right?  
14 A That is correct.  
15 Q How big is the great room?  
16 A (No response).  
17 Q Estimate?  
18 A Twenty by twenty, maybe.  
19 Q Did the rug cover the entire room of the  
20 twenty by twenty room?  
21 A Most of it.  
22 Q Okay. Decent size room, decent  
23 size rug, correct?

1 Q. I asked you if you recalled the defendant said  
2 he would not be surprised if we found blood in his  
3 house. Since -- At some point, you became a member of  
4 the defense team for the defendant. Isn't that right?

5 A. From a legal standpoint, I guess that's  
6 correct, yes.

7 Q. Okay. Now, I'm going to show you -- You also  
8 testified in front of the Grand Jury March of 1997,  
9 didn't you?

10 A. Yes, I did.

11 Q. You testified under oath?

12 A. Yes, I did.

13 Q. I'll show you what I'll have marked as State's  
14 for Identification I, and I would ask you to read Lines  
15 2 through 5 to yourself, please.

16 Okay. Now I'm going to ask you again. Did  
17 the defendant tell you in the summer of '96 that he  
18 would not be surprised if blood was found in his house?

19 A. Yes, he did, according to that testimony,  
20 which I would stand by.

21 Q. You would stand by this testimony?

22 A. Yes.

23 Q. Now, did he tell you what he thought might

1 to testify in front of the Grand Jury with the  
2 defendant before you testified?

3 A. Yes. We had lunch on a weekly basis.

4 Q. So he knew you were going into the Grand Jury?

5 A. Yes, he did.

6 Q. And he knew he had told you all these things  
7 that would account for blood. Isn't that right?

8 A. Yes, he did.

9 Q. And he knew you were going to be under oath  
10 when you testified before the Grand Jury, didn't he?

11 A. Yes, he did.

12 Q. Now, you testified in March of 1997. Do you  
13 recall meeting the defendant on July 9, 1996 in your  
14 office?

15 A. Yes, I do.

16 Q. What did the defendant say to you when he  
17 entered your office?

18 A. We had prearranged the meeting, and he came in  
19 to tell me what his side of the story was.

20 Q. How did he appear when he came in?

21 A. He was a little upset.

22 Q. Well, do you recall telling the Grand Jury  
23 that he was distraught?

1 account for blood in the house?

2 A. Yes, he did.

3 Q. What did he tell you?

4 A. He said, like me, we have four kids, and the  
5 kids run around all the time and always get banged up,  
6 and that could be a reason for blood. Or Annie had  
7 been over there a number of times cooking dinner, could  
8 have cut her finger, or hanging pictures up on the  
9 wall.

10 Q. This is Annie, Anne Marie Fahey?

11 A. Yes, it is.

12 Q. What else did he tell you could account for  
13 the blood in the house?

14 A. That's all.

15 Q. Didn't he say that Anne Marie Fahey was a  
16 heavy menstrual bleeder and that would account,  
17 possibly, for the blood in his home?

18 A. Yes, he did.

19 Q. Didn't he say she was such a heavy menstrual  
20 bleeder she had bled through her clothes on occasion at  
21 work and had to leave?

22 A. Yes, he did.

23 Q. Did you discuss the fact that you were going

1 A. If that's the word I used, said, distraught,  
2 yes.

3 Q. What was he?

4 A. Upset.

5 Q. And what did he tell you?

6 A. He recounted the --

7 Q. Let's go to the beginning of the conversation.  
8 What did he say to you?

9 A. He asked me if I wanted to -- If I recall, he  
10 asked me if I wanted to know what had happened and what  
11 the history of their relationship was, his relationship  
12 with Anne Marie.

13 Q. And did he tell you then what happened on June  
14 27?

15 A. Yes.

16 Q. Now, what did you do when he's telling you  
17 this?

18 A. Listened.

19 Q. And after he told you, what did you do?

20 A. I suggested that we prepare some kind of  
21 statement because it had been eight, nine days, and he  
22 had not said anything or had not contacted the family,  
23 and that we should do those two things. So I prepared

1 a one-page statement based on what he told me.

2 Q. Did you type it in your computer?

3 A. Yes.

4 Q. Was he in the office when you did it?

5 A. Yes, he was.

6 Q. Did you print it out?

7 A. Yes.

8 Q. Did you give him a copy of it?

9 A. Yes.

10 Q. Did he look at it?

11 A. Yes.

12 Q. Did he appear to read it?

13 A. Yes.

14 Q. What did he tell you about the statement?

15 A. He said it looked pretty good to him, and he  
16 would take it to his lawyers and get back to me in the  
17 afternoon.

18 Q. By "looked pretty good," what did you  
19 understand that to mean?

20 A. That it was accurate.

21 MR. CONNOLLY: Your Honor, at this point, I  
22 would move to introduce State's Exhibit 179.

23 MR. MAURER: Without objection, Your Honor.

1 THE COURT: Without objection, State's Exhibit  
2 179 is admitted.

3 (State's Exhibit No. 179 was admitted into  
4 evidence.)

5 THE COURT: You don't have a smaller copy of  
6 the exhibit?

7 MR. CONNOLLY: I do. First I'm going to show  
8 it to the witness.

9 BY MR. CONNOLLY:

10 Q. Mr. Murphy, I'm going to show you State's  
11 Exhibit 179. Do you recognize that?

12 A. Yes, I do.

13 Q. What is it?

14 A. It's the statement I prepared.

15 Q. In fact, you've signed it on the bottom.  
16 Isn't that right?

17 A. That's correct.

18 Q. So it's a true and accurate copy of what you  
19 prepared?

20 A. Yes.

21 Q. And this is the same statement Mr. Capano  
22 looked at and said "looked pretty good"?

23 A. That's correct.

1 Q. Did you ever release the statement to the  
2 public?

3 A. I'm sorry?

4 Q. Did you ever release the statement to the  
5 public?

6 A. No.

7 Q. Now, I'm going to show you State's for  
8 Identification -- Let me get it marked State's for  
9 Identification J. This is a blow-up of the same  
10 statement, isn't it?

11 A. Yes, it is.

12 (State's J was marked for identification.)

13 Q. Now, Mr. Murphy, I'm going to give you back  
14 State's Exhibit 179, and I would like you, if you  
15 would, to read this slowly for us into the record.

16 A. "Statement by Thomas J. Capano in the  
17 disappearance of Anne Marie Fahey, July 9, 1996.

18 "The disappearance of Anne Marie Fahey remains  
19 as much a mystery to me as it does to her family and  
20 friends. I can only say I share the gut-wrenching  
21 emotions of Anne Marie's family, and pray for her safe  
22 return.

23 "While I can do nothing to end the speculation

1 of the public and press, I can state for the record the  
2 pertinent facts of my last meeting with Anne Marie.

3 "I did have dinner with Anne Marie in  
4 Philadelphia on the evening of Thursday, June 27. We  
5 returned to Wilmington. We drove to her apartment at  
6 approximately 10:00 p.m. I walked Anne Marie into her  
7 apartment, stayed a few moments, said good night and  
8 left. I noticed nothing unusual as I left. That was  
9 the last time I saw or spoke to Anne Marie. I then  
10 drove home, where I remained until I left for the  
11 office the next morning.

12 "While Anne Marie had some problems, there was  
13 nothing out of the ordinary in either her conversation  
14 or behavior that would lead me to believe anything was  
15 amiss. I am at a complete loss to explain what caused  
16 her disappearance.

17 "It is difficult to respond as to how others  
18 may characterize our relationship. Frankly, the nature  
19 of our relationship is and will remain a matter between  
20 Anne Marie and myself. What is relevant and important  
21 is that Anne Marie and I are good friends and parted  
22 company good friends that evening.

23 "I was informed of Anne Marie's potential

1 Carpet was. I believe it is.  
 2 Q. I'm going to show you what's been marked or  
 3 introduced, rather, as State's Exhibit 210. Do you  
 4 recognize that?  
 5 A. Yes. That's the invoice for the carpeting  
 6 that we bought.  
 7 Q. All right. And now I'm going to show you  
 8 State's Exhibit 215. Do you recognize that?  
 9 A. Yes. That's the sample of the carpeting that  
 10 we gave to you when you called us up and asked us about  
 11 it.  
 12 Q. Okay. And basically, you were contacted by  
 13 the investigators. Right?  
 14 A. Yes.  
 15 Q. And you gave that sample to whom?  
 16 A. To Detective Donovan, I believe.  
 17 Q. The gentleman seated there?  
 18 A. That gentleman right over there.  
 19 MR. CONNOLLY: No further questions,  
 20 Your Honor.  
 21 THE COURT: Mr. Oberly?  
 22 MR. OBERLY: I have no questions.  
 23 THE COURT: All right. I presume Mr. Marks

Q. And did you go to his home on June 24, 1996?  
 2 A. Yes, I did.  
 3 Q. You're checking your calendar in front of you,  
 4 I take it.  
 5 A. Yes.  
 6 Q. Did you go on July 22, 1996?  
 7 A. Yes, I did.  
 8 Q. And that would have been four Mondays later  
 9 from June 24. Is that right?  
 10 A. Yes.  
 11 Q. Now, did you go on July 8, 1996?  
 12 A. No.  
 13 Q. Why didn't you go on Monday, July 8, 1996?  
 14 A. Because Mr. Capano called and said that they  
 15 had been away for the holiday weekend, and the house  
 16 did not need to be cleaned.  
 17 Q. Now, when you went to the house the next time,  
 18 on July 22, was anything different?  
 19 A. Yes.  
 20 Q. What was different?  
 21 A. The sofa was missing and the carpet had been  
 22 taken up, and an area rug was there.  
 23 Q. And in what room were these changes made?

1 may be excused also.  
 2 MR. CONNOLLY: I don't think we'll be  
 3 recalling him.  
 4 THE COURT: Thank you very much, Mr. Marks.  
 5 You're excused.  
 6 MR. CONNOLLY: Your Honor, the State calls  
 7 Ruth Boylan.  
 8 RUTH BOYLAN, having been called on the part  
 9 and behalf of the State as a witness, being first duly  
 10 sworn under oath, testified as follows:  
 11 DIRECT EXAMINATION  
 12 BY MR. CONNOLLY:  
 13 Q. Good morning, Mrs. Boylan.  
 14 A. Good morning.  
 15 Q. Mrs. Boylan, in 1996, did you work as a  
 16 housekeeper for Thomas Capano?  
 17 A. Yes, I did.  
 18 Q. How often would you go to clean his home?  
 19 A. Every other week.  
 20 Q. And was his home located at 2302 Grant Avenue?  
 21 A. Yes.  
 22 Q. What day of the week would you go?  
 23 A. Monday.

1 A. Excuse me?  
 2 Q. In what room of the house were these changes  
 3 made?  
 4 A. Well, I would call it a den, and it had a  
 5 dining area.  
 6 Q. Was there a dining room table in this room?  
 7 A. Yes.  
 8 Q. And was it kind of off of the kitchen?  
 9 A. Yes.  
 10 Q. Was it above the garage, if you remember?  
 11 A. Yes. Well, I don't know that it was over the  
 12 garage, but it was a floor above the garage.  
 13 Q. The couch that you said was missing, what did  
 14 that couch look like?  
 15 A. It was a deep rose with a pineapple print or  
 16 motif.  
 17 Q. And was the motif a different color or was it  
 18 kind of a solid color?  
 19 A. Might have been a little lighter.  
 20 Q. And was the -- What kind of condition was the  
 21 couch in when you had seen it, let's say, on June 24,  
 22 1996?  
 23 A. Very good.



1 Q. And you can't tell us whether the shot that  
2 was fired came from the bottom, out the side, or from  
3 the side through the bottom. Correct?

4 A. No, sir.

5 Q. You can tell us that it was a bullet that  
6 caused it?

7 A. A projectile, bullet, or slug of some sort.

8 MR. OTERI: Nothing else, Your Honor.

9 MR. WHARTON: Nothing further, Your Honor.

10 THE COURT: Mr. Ennis, thank you for your  
11 testimony. You're excused.

12 THE WITNESS: Thank you, Your Honor.

13 MR. WHARTON: Kenneth Chubb.

14 KENNETH CHUBB, having been called on the part  
15 and behalf of the State as a witness, being first duly  
16 sworn under oath, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. WHARTON:

19 Q. Mr. Chubb, good afternoon.

20 Where do you live, sir?

21 A. Elmertown, Pennsylvania.

22 Q. Where is that located?

23 A. Right near Hershey.

1 Q. Do you have any connection to Delaware?

2 A. Yes. We've been going to Delaware since  
3 1981. We have a place down there and a boat.

4 Q. Where is your place?

5 A. The mailing address is Millsboro, Delaware.

6 It's off of Long Neck Road, in a park called Bay City.

7 Q. That would be near Rehoboth Bay?

8 A. Right off Rehoboth Bay, near Indian River.

9 Q. I think you said you had a boat.

10 A. Yes.

11 Q. Are you a fisherman?

12 A. Yes, I am.

13 Q. How long have you going down to Bay City?

14 A. We've been at Bay City since 1986.

15 Q. Do you know a fellow by the name of Ronald  
16 Smith?

17 A. Yes, I do. He has his boat right next to  
18 mine.

19 Q. I want to ask you if you can go back to the  
20 July 4th weekend of 1996. Were you down at your place  
21 during that weekend?

22 A. Yes, we were.

23 Q. Did you go out fishing that weekend?

1 A. Yes, we did.

2 Q. You say "we." Who are you talking about?

3 A. I'm talking about my son, his wife, and three  
4 children, and my wife and I.

5 Q. Did you all go out fishing?

6 A. We all went fishing, right.

7 Q. Let me ask you if, when you were out, over  
8 that weekend, you found anything out in the water.

9 A. Yes, I did. In the afternoon, we were

10 finished fishing, and we started back in. I started  
11 the engines up, and started to head for home, and my  
12 boy said, "I see something floating over there, Dad."  
13 He said, "What is that?" I said, "Let's go over and  
14 take a look."

15 Q. Where were you? About how far out were you?

16 A. Between 8 and 10 miles.

17 Q. Off Indian River?

18 A. Off Indian River, correct.

19 Q. After your son called your attention to  
20 whatever it was that was floating over there, what did  
21 you do?

22 A. I pulled alongside this, and he said, "It's a  
23 cooler." And I said, "Well, grab ahold of it and pull

1 it in the boat."

2 Q. Did he do that?

3 A. Yes, he did. He dumped the water out and  
4 pulled it in. It didn't have a lid, and it was missing  
5 a handle.

6 Q. What else did you notice about it?

7 A. It had two bullet holes in it. And this sort  
8 of amazed us all. We were questioning, wondering why  
9 anybody would shoot it. Looked like a brand new  
10 cooler.

11 Q. What did you do with it?

12 A. I put it on board the boat, because I had an  
13 old one sitting there with the fish in it that was all  
14 beat up. It was real old and the bottom was smashed.  
15 And I thought, Well, I can take the top off of mine and  
16 the handle, and I'll convert this one, and patch them  
17 two holes, and I can make myself a nice cooler.

18 Q. Did you bring it into shore?

19 A. Yes, I did. Brought it back into Bay City and  
20 docked the boat.

21 Q. Did you see Mr. Smith when you came back in?

22 A. When I docked the boat, I put this cooler over  
23 on the dock, and Ron was working on his boat. I said,

1 subjects that we discussed?

2 A Yes.

3 Q And were you under oath at that time as  
4 well?

5 A I'm not sure we discussed anything about  
6 Gerry -- or anything else but the cooler.

7 Q And his interest in boats?

8 A I'm not sure we discussed that either. We  
9 may have.

10 Q Whatever is in the transcript is what is  
11 there?

12 A Yes.

13 Q You were under oath then too?

14 A Yes.

15 Q Let's talk a little bit about the cooler.

16 Did you have any conversations in the spring of 1996  
17 with your brother Tom relating to his desire to buy a  
18 present for Gerry?

19 A Yes.

20 Q Tell us about those conversations.

21 A March, April of '96, I was at my mother's  
22 home. Tom was there. He expressed a desire to get  
23 something for Gerry, a multiple gift, if you would,

1 something that expressed his appreciation for Gerry  
2 treating his daughters as well as he had the previous  
3 summer, and the anticipation of spending a lot of  
4 time at the shore the coming summer. He wanted to  
5 get Gerry something because he assumed his children  
6 would be spending a lot of time at Gerry's house,  
7 using all Gerry's water toys.

8 Q Did Tom have anything in particular in mind  
9 at that time?

10 A No.

11 Q Did you make any suggestions to him?

12 A Yes.

13 Q What did you suggest that he buy for Gerry?

14 A Well, at the time I was involved with the  
15 possibility of the construction at the Sports  
16 Authority, so I had been on the 202 job where they  
17 have the store and looking at their inventory, and we  
18 were deciding whether or not we were going to do this  
19 job. And I noticed that they have quite a bit of  
20 fishing equipment there, and I suggested to Tom that  
21 he go there and purchase something, and a cooler was  
22 one of the things that I suggested because Tom has no  
23 knowledge of fishing or boating and couldn't possibly

1 THE COURT: Has any member of the jury come  
2 into contact with any information concerning this case  
3 since we recessed last week?

4 (No response.)

5 THE COURT: There are no affirmative answers.

6 Again, I assure you we have been working this  
7 morning.

8 Mr. Oteri.

9 MR. OTERI: Thank you, your Honor.

10 Defense calls Dr. Carol Tavani.

11 -----

12 CAROL A. TAVANI, M.D., having been called on  
13 the part and behalf of the Defendant, having been duly  
14 sworn according to law, was examined and testified as  
15 follows:

16 -----

17 DIRECT EXAMINATION

18 -----

19 BY MR. OTERI:

20 Q. Would you state your full name, please?

21 A. Dr. Carol A. Tavani.

22 Q. And where do you practice, Doctor?

23 A. I practice at Christiana Hospital.

1 Q. Are you certified by any specialty boards?

2 A. Yes. By the American Board of Psychiatry and  
3 Neurology.

4 Q. That's board certification?

5 A. That's board certification. I got that in  
6 '85.

7 Q. And how do you get that?

8 A. Well, that consists of a two-day examination,  
9 first written, and then after the written exam is  
10 passed, there's an oral examination which is given.

11 Q. And you received that in 1985?

12 A. Yes.

13 Q. And are you a Fellow of any kind of --

14 A. Yes. I'm a Life Fellow of the American  
15 Psychiatric Association.

16 Q. What does that include? What does that mean?

17 A. That is a distinction. It's rather simple to  
18 become a member of one's professional organization,  
19 but fellowship demands that you've met certain  
20 criteria, that you've had certain honors or  
21 distinctions.

22 Q. All right. And are you a Diplomate of any  
23 particular organization?

1 Q. And that's in?

2 A. That's in Newark, Delaware.

3 Q. All right.

4 And are you a doctor of -- medical doctor?

5 A. Yes.

6 Q. All right. And where did you receive your  
7 education?

8 A. I went to Cabrini College in Radnor,  
9 Pennsylvania; then Villanova University, Jefferson  
10 Medical College, the Medical Center of Delaware, now  
11 Christiana Care Health Systems, and then Jefferson  
12 again for residency.

13 Q. All right. And you became a physician in  
14 what year, Doctor?

15 A. 1979.

16 Q. And are you licensed in any state?

17 A. Delaware.

18 Q. What year were you licensed in?

19 A. 1979 --

20 Q. Might I suggest '80?

21 A. -- or '80.

22 Q. Okay.

23 A. Internship.

1 A. Diplomate of, again, the APA, the American  
2 Psychiatric Association, National College of Forensic  
3 Examiners. Several organizations.

4 Q. You are not a forensic psychiatrist, are you?

5 A. No, I'm not.

6 Q. You are a -- what kind of psychiatrist?

7 A. I am an in-the-trenches physician. What I  
8 mainly do and what my major expertise is  
9 neuropsychiatric difficulties in people who have some  
10 disorder of the brain in people who are hospitalized,  
11 have medical or surgical problems, problems after  
12 surgery, problems after trauma, after head injuries,  
13 some insult to the brain, and the pharmacology  
14 therein. That's my area.

15 Q. And you -- as you told us you practice at  
16 Christiana. Do you practice anywhere else?

17 A. Yes. I spend a good 15 hours a week in the  
18 correctional system with Prison Health Services  
19 treating the inmates both at Gander Hill and at the  
20 women's prison.

21 Q. And you are employed there by an organization  
22 that has a contract with Gander Hill?

23 A. I'm employed there by Prison Health Systems.



1 was in his own best interests. His thought processes  
2 just were not on target.

3 MR. OTERI: Thank you, Doctor.

4 Judge, this may be an appropriate time for  
5 lunch.

6 THE COURT: All right. We will take the  
7 luncheon recess. According to my watch it's five  
8 minutes to 1:00. We will come back at 2:00 o'clock.  
9 We will start on time.

10 Please take the jury out.

11 (Thereupon, the jury was excused for lunch.)

12 THE COURT: Court will stand in recess until  
13 2:00 o'clock.

14 -----

15 (Thereupon, the luncheon recess was taken at  
16 12:55 p.m., and then the proceedings continued as  
17 follows at 2:10 p.m.)

18 -----

19 THE COURT: Please bring the jury in.

20 (Thereupon, the jury returned to the  
21 courtroom.)

22 THE COURT: Dr. Tavani should resume the  
23 stand.

1 (Dr. Tavani resumed the stand at 2:10 p.m.)

2 MR. OTERI: Your Honor, may we approach?

3 MR. O'DONNELL: Regarding scheduling.

4 THE COURT: Concerning scheduling?

5 MR. O'DONNELL: Yes, sir.

6 THE COURT: You may come forward.

7 (The following proceedings were held at the  
8 bench, out of the hearing of the jury.)

9 MR. OTERI: Your Honor, defendant offers Dr.  
10 Tavani's notes subject to a redaction of sorts after I  
11 go through them.

12 THE COURT: All right.

13 Mr. Wharton.

14 MR. WHARTON: We don't object to that.

15 THE COURT: All right. So this will be  
16 admitted as Defense Exhibit 28 subject to a review by  
17 the parties concerning any redactions that need to be  
18 made before it goes to the jury.

19 MR. OTERI: Thank you, your Honor.

20 -----

21 (Evidence was marked for identification by  
22 the Prothonotary as Defendant's Exhibit Number 28.)

23 -----

1 MR. OTERI: Your Honor, the record may

2 indicate that I had to move the podium. My rear end

3 was blocking the witness from the view of the press.

4 I've done what they asked by moving the podium.

5 (Pause.)

6 BY MR. OTERI:

7 Q. All right. Now, Dr. Tavani, are you familiar  
8 with a psychiatric term called "confabulation"?

9 A. Yes, I am.

10 Q. And can you tell us what that term means?  
11 Define it, if you will.

12 A. Okay. Confabulation is really a rather  
13 well-known neuropsychiatric symptom wherein you have a  
14 brain that --

15 THE COURT: Just a second. We lost your  
16 voice.

17 THE WITNESS: It's falling off.

18 (Pause.)

19 THE WITNESS: Can I be heard?

20 THE COURT: Yes.

21 THE WITNESS: Thank you.

22 MR. OTERI: Can you hear her back there?

23 THE WITNESS: Confabulation is a situation

1 that is seen in diffuse organic brain disease or

2 malfunction wherein gaps occur in the memory. Spaces

3 occur almost like holes in Swiss cheese. And what the

4 mind does when these gaps occur is that it -- it tries

5 to fill these gaps in to make some sort of sense out

6 of reality. And the way it does this is, it inserts

7 things that either the person thinks must have been

8 what happened or maybe the person has heard that these

9 things happened or it might have been suggested to the

10 person or even asked as a question. But the person

11 who has these gaps in memory then takes this

12 understanding of what must have been or what was asked

13 of him or her, and the person inserts this into the

14 spaces to fill the gaps. And then this hybrid, if you

15 will, becomes the person's new truth. It becomes the

16 person's new memory.

17 I think that would be a simple explanation of  
18 confabulation.

19 BY MR. OTERI:

20 Q. Do alcohol and illicit drugs -- how do they  
21 affect the brain and this condition?

22 A. Well, confabulation historically is -- was

23 best known to occur in alcoholics. We have almost 100

1 even said. He doesn't remember most of what he said  
2 and he either admits to what he doesn't remember or he  
3 says it must have been; I'll believe you if you say  
4 so.

5 This is a generality of those three pages,  
6 without being -- putting you through the whole  
7 recitation, if that's okay.

8 Q. Doctor, is it fair to say you have  
9 approximately two more pages of these kinds of  
10 examples?

11 A. I couldn't hear the beginning.

12 Q. Is it fair to say that you have approximately  
13 two more pages --

14 A. Yes.

15 Q. -- of this kind of --

16 A. Yes. There are two more pages of these  
17 kinds.

18 Q. Doctor, after reading these transcripts and  
19 making these lists up, do you have an opinion as to  
20 whether or not Gerry suffers from confabulation and  
21 amnestic disorder?

22 A. He does suffer from confabulation, and he  
23 unquestionably suffers from a serious amnestic

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1 disorder. In fact, he may actually suffer from  
2 dementia. I could not definitively say that because I  
3 have not personally examined Gerry. I would have to  
4 know a little bit more about his mental status  
5 specifically. I didn't want to go as far as to say  
6 this had progressed into dementia, but it is  
7 certainly, at the very least, a severely amnestic  
8 disorder with confabulation.

9 Q. Okay. And, Doctor, you had -- in preparing  
10 for your testimony here, you had provided to you by  
11 the defense team a series of e-mails. Can you take  
12 those e-mails out, please, Doctor?

13 A. Sure.

14 (Pause.)

15 I have the e-mails.

16 Q. Okay.

17 Now, Doctor, based upon your study of the  
18 e-mails between Anne Marie Fahey and Tom Capano, and  
19 vice versa, do you have an opinion based upon a  
20 reasonable psychiatric certainty about Tom Capano's  
21 states of mind during that period of time, January 1  
22 through June 27th?

23 A. Yes, I do.

1 Q. All right. What is that opinion?

2 A. Well, in general it can be said that -- with  
3 regard to the relationship I assume you're asking me.

4 Q. Go ahead.

5 A. His state of mind, the e-mails indicate a  
6 very warm, affectionate, cordial relationship really  
7 throughout. The letters that I have date from 7/21/95  
8 to 6/27.

9 Q. I would appreciate, Doctor, if you don't  
10 refer to the e-mails as letters because we have other  
11 letters in this case.

12 A. I'm sorry. The e-mails. The e-mails.  
13 They're friendly. They're jocular. They're mutually  
14 solicitous. There's mutual caring and concern  
15 evident. There's a desire to please each other  
16 throughout them. They both express frequent thoughts  
17 of each other as well as love which will last forever.  
18 There's interest expressed in each other's lives as  
19 well as sharing of various intimacies of each other's  
20 daily life events. There's mutual solicitation to see  
21 each other. There's a statement of Miss Fahey asking  
22 like if Mr. Capano is free, 2/1 correspondence.

23 On 2/7 there's a statement wherein she

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1 expresses her wish that the relationship be platonic.  
2 She wants to be just friends. He accepts the limits  
3 that she sets and says he will continue to be there  
4 for her on her terms.

5 On 2/12 there was one -- there was one  
6 negative one. She references an incident where he had  
7 been calling very, very frequently, and the details of  
8 that are unclear, but it clearly caused her to feel  
9 distance since she was able to tell him that.  
10 However, then in the same letter she apologizes for  
11 her own behavior and she asks where he was the  
12 previous night.

13 There's a jocular, affectionate letter on  
14 2/13, and then these communications -- the e-mails  
15 come to an abrupt halt until the 29th of April and  
16 then pick up with the same affectionate tone and  
17 poking fun at each other, essentially with resumption  
18 of the same dynamics, I would say, and patterns as in  
19 the earlier set.

20 And the letters continue through May and  
21 those of June '96 begin, on 6/3, with his asking her  
22 to dinner and reminding her about matters of self-care  
23 and self-nurturance, which did he frequently in these

MR. OTERI: Okay. Thank you.

(The following proceedings were held within the hearing of the jury.)

MR. O'DONNELL: Based on that, we withdraw the objection.

THE COURT: Thank you.

BY MR. WHARTON:

Q. All right. Now, you're aware, are you not, Doctor, from having reviewed Dr. Bryer's notes that there are things in there that the patient told his doctor, Dr. Bryer, within the context of his psychiatrist/patient relationship which are inconsistent with the notion that Anne Marie Fahey died on June the 27th of 1996?

A. Yes.

Q. Okay. Specifically when was the first time that Dr. Bryer and the defendant met?

A. It was -- I'll just flip to the date -- 8/16/96.

Q. Okay. And in that 8/16/96 note, doesn't he say about halfway down the page there that he denied any involvement in her disappearance as well as any violence towards her?

A. Yes, he does.

Q. Okay. And do you know, do you not, from the representations that have been made in court that he did at least have a role in her disappearance?

A. Yes, I do.

Q. You also know that he attempted to provide Dr. Bryer with an explanation for blood in his apartment or house?

A. Yes, I do.

Q. And that states that they would only have intercourse, he and Anne Marie Fahey, while she was menstruating?

A. Yes.

Q. And that the menstrual blood of Anne Marie Fahey resulting from their intercourse would be what the FBI would find in his house?

A. Yes, he said that.

Q. And are you aware that blood matching Anne Marie Fahey's, at least to the odds of one in 11,000 that could be anyone else's, was found on a baseboard and radiator cover?

A. I'm not certain whether I knew that or not to be honest.

Q. Okay. In any event, baseboard and radiator

cover are not typical places you would expect to find menstrual blood having been shed as a result of intercourse; correct?

A. I suppose, unless you had it on your hands and you touched something.

Q. Now, also you were aware, were you not, that he told Dr. Bryer that he took Anne Marie Fahey back to his apartment after their night together on the 27th and he heard nothing further from her?

A. Yes. I saw that.

Q. That he initially believes she left for the weekend to collect her thoughts and he now believes she may have been a victim of random violence in her neighborhood or perhaps isolating herself somewhere?

A. Correct.

Q. And that he recognizes that suicide is a possibility but can't explain why her body hasn't turned up.

A. Correct.

Q. Okay. And this is a meeting -- this was the first meeting he had with Dr. Bryer --

A. Correct.

Q. -- which was on August the --

A. 16th.

Q. -- 16th of 1996?

A. Correct.

Q. Correct?

A. Correct.

Q. Correct?

A. Correct.

Q. Okay. Now, on August the 23rd of 1996, once again he's in this conversation with Dr. Bryer and he is the patient and Dr. Bryer is the psychiatrist?

A. Yes.

Q. And he's -- he tells Dr. Bryer that he feels grief over her disappearance, slash, loss?

A. Yes.

Q. Of someone that he cared for deeply about?

A. Correct.

Q. Okay. Well, he also complains about an intensive interrogation of his 73-year-old mother?

A. Yes.

Q. Do you know if his mother was ever interviewed?

A. Do I know if his mother was ever

1 next witness is.  
 2 Please bring the jury in at this time.  
 3 (Jury entered the courtroom at 11:55 a.m.)  
 4 THE COURT: Mr. Oteri, would you call your  
 5 next witness?  
 6 MR. OTERI: Thank you, your Honor.  
 7 The defense calls Thomas Capano.  
 8 THOMAS J. CAPANO, having been called on the  
 9 part and behalf of the Defendant, having been duly  
 10 sworn according to law, was examined and testified as  
 11 follows:

12 -----  
 13 DIRECT EXAMINATION  
 14 -----

15 BY MR. OTERI:

16 Q. State your name, please, sir.  
 17 A. Thomas Joseph Capano.  
 18 Q. Thirty seconds and you wreck things.  
 19 A. Yeah, I know.  
 20 Q. How are you feeling? Are you all right?  
 21 A. No. I don't mean that in any way. I'm  
 22 perfectly competent to testify. I'm just -- I just  
 23 mean I'm nervous.

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1 Q. Are you on medications?  
 2 A. Yes, I am.  
 3 Q. What did you take today?  
 4 A. Um, Wellbutrin, Xanax, Lomotil and Tylenol.  
 5 I took that once. I'll take it again at two o'clock.  
 6 Q. Tom, you heard Dr. Tavani testify here for a  
 7 couple of days, did you not?  
 8 A. Yes, I did.  
 9 Q. You heard her description of you having  
 10 scattered thoughts and trouble concentrating.  
 11 Do you have that condition right now?  
 12 A. Yes.  
 13 Q. Are you having trouble concentrating  
 14 answering questions?  
 15 A. I will.  
 16 Q. Okay. So that I will take my time and you  
 17 take your time answering. Don't feel upset at all.  
 18 If you can't grab a word, just take your time. Okay?  
 19 A. Yeah.  
 20 Q. All right?  
 21 A. I ramble.  
 22 Q. Okay. We will give you all the time in the  
 23 world to get concentrated.

1 A. Okay.  
 2 Q. Tom, I would like you to tell the jury about  
 3 your background as it concerns your family, your  
 4 parents. As a kid growing up, what was it like?  
 5 A. Okay. This is kind of important to me,  
 6 Ladies and Gentlemen.

7 Q. Tom, can you pick the mike up a little so  
 8 they can hear you?

9 A. That way (indicating)?

10 Q. Yes.

11 A. I started to say that this part is pretty  
 12 important to me because I've been portrayed as a  
 13 spoiled rich kid born with a silver spoon in my mouth.

14 MR. CONNOLLY: Your Honor, we're going to  
 15 object. We're not going through his life history.

16 MR. OTERI: The defendant is on trial for his  
 17 life. The Government has painted a saintly picture of  
 18 Anne Marie Fahey and a demonic picture of the  
 19 defendant.

20 THE COURT: Background information. I'm not  
 21 interested in a complete life story.

22 Certainly take that information that you  
 23 think is relevant and I'll overrule the objection to

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1 that extent.  
 2 I would expect, again, Mr. Capano's responses  
 3 be in answer to your inquiries, rather than simply an  
 4 unimpeded presentment to the jury.  
 5 BY MR. OTERI:  
 6 Q. Please continue, Tom.  
 7 A. I come from a blue-collar background. My  
 8 father was a carpenter. All my uncles were in the  
 9 building trades. Both of my grandfathers were  
 10 immigrants. One was a stonemason. One was a  
 11 bricklayer. Most of my first cousins were in the  
 12 building trades. I come from a background of people  
 13 who worked with their hands. My brother Louis did.  
 14 My dad did go into the business not long before I was  
 15 born. He said he was always proud of the fact his  
 16 first job was to build an outhouse. But he, you know,  
 17 ultimately was fairly successful. I was educated in  
 18 the local parochial school.  
 19 Q. Excuse me, Tom. Before you get to that. Do  
 20 you have brothers and sisters?  
 21 A. Yeah.  
 22 Q. Tell us.  
 23 A. Yes. I have an older sister Marian. And I'm